

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

February 23, 2016 at 3:00 p.m.

1. [15-29301](#)-E-13 CONNELL JOHNSON  
DPC-1

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-20-16 [[31](#)]

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 20, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

The Chapter 13 Trustee filed a Notice of Withdrawal of Motion to Dismiss on February 12, 2016. Dckt. 35.

**The court's decision is to overrule the Objection.**

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor failed to provide valid photo identification and Social Security Identification at the Meeting of Creditors.

The Meeting of Creditors was continued to February 11, 2016.

On February 12, 2016, the Trustee filed a Notice of Withdrawal, stating that the Debtor appeared at the continued Meeting of Creditors and provided valid identification.

Therefore, in light of the Trustee's withdrawal, no other objections pending, and independent review of the plan, the Plan does comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the Plan is confirmed.

The court shall issue a minute order substantially in the following form holding that:

February 23, 2016 at 3:00 p.m.

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Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is overruled, Debtor's Chapter 13 Plan filed on November 30, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

2. [14-28302-E-13](#) SHEILA RAY  
MMM-2

MOTION TO APPROVE LOAN  
MODIFICATION  
1-28-16 [[36](#)]

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on January 28, 2016. By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

The Motion to Approve Loan Modification was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2).

<p><b>The hearing for the Motion to Approve Loan Modification is continued to 3:00 p.m. on March 22, 2016.</b></p>
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The Motion to Approve Loan Modification filed by Sheila Ray ("Debtor") seeks court approval for Debtor to incur post-petition credit. Bank of America, N.A. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a loan modification which will reduce Debtor's mortgage payment to \$1,100.19, which includes the principal, interest, and estimated escrow payments. The modified principal balance is \$288,534.03.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

David Cusick, the Chapter 13 Trustee, filed a response to the instant Motion on February 9, 2016. Dckt. 41. The Trustee states that he does not oppose the modification since it appears to be in the best interest of the Debtor. However, the Trustee notes that the loan modification is offered by Bank of America, N.A.

The Trustee states that Proof of Claim No. 1, filed on October 14, 2015, reports the creditor to be Deutsche Bank National Trust Company, as Trustee Under the Pooling and Servicing Agreement Relating to Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1. The Proof of Claim indicates that Bank of America, N.A. is the servicer.

A review of the information and the Proof of Claim shows that Bank of America, N.A. is not, in fact, the creditor but rather that "Deutsche Bank National Trust Company, as Trustee Under the Pooling and Servicing Agreement Relating to Impac Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1" is the actual creditor. Even as of July 14, 2015, with the Notice of Mortgage Payment Change, Bank of America, N.A. indicates that it is the authorized agent of the actual creditor, here being Deutsche Bank National

Trust Company as Trustee. Nothing in the Proof of Claim nor the Motion provides the grounds for Bank of America, N.A. to offer a loan modification on behalf of the real creditor.

The court will not authorize a loan modification when the real creditor is not named or when the agent of the creditor does not provide evidence that they are authorized to enter into loan modification on behalf of the real creditor.

While the court agrees with the Trustee and the Debtor that it appears that the loan modification would be in the best interest of the Debtor, the court will not authorize a "maybe effective" loan modification without the real creditor or a party with authority to do so, is presented.

#### **FAILURE TO PROVIDE A BASIS FOR EXERCISE OF FEDERAL JUDICIAL POWER**

The requirement to have the actual parties, with the actual rights, and the actual interests before the federal court is a long standing federal principle - dating back to the enactment of the Constitution itself. U.S. Const. Article III, Sec. 2. The federal courts are not a forum for the theoretical or one in which parties who do not have rights attempt to litigate on behalf of others who are not before the court (with limited exceptions to this rule, such as class action and other special representative proceedings authorized by Congress). Standing must be determined to exist before the court can proceed with the case. *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 771. (9<sup>th</sup> Cir. 2006); *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64, 117 S.Ct. 1055 (1997).

The standing requirement is not merely a "procedural issue," but a fundamental requirement arising under the Constitution.

Though this court has clearly addressed this issue for more than five years, it is still presented with motions such as this which seek relief against mere "place holder opponents," and not the real party in interest whose rights and interests are the subject of the action. This can lead to horrific events for a debtor (and the debtor's counsel and professional liability insurer) in this type of setting when no relief is obtained with respect to the real party in interest. At best, after tens (if not hundreds) of thousands of dollars of litigation, the debtor (and debtor's counsel and professional liability insurer) might be able to prove that the relief was obtained for purposes of an undisclosed principal, and that such determination should be binding on good faith purchasers of the note years later. FN.1.

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FN.1. This risk and liability of litigating against a "place holder opponent" becomes even more stark when one considers the misidentification occurring in connection to motions to value secured claims (11 U.S.C. § 506(a)) for purposes of a "lien strip" or an objection to claim.  
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Here, in reviewing the Proof of Service, it is clear that Deutsche Bank National Trust Company has not even been effectively served with the Motion and supporting pleadings. Dckt. 40. Debtor purports to have served a Richard Bauer in Santa Anna, California as being effective service on the actual creditor who is to be the party to the Motion. While Mr. Bauer is an attorney who represents Deutsche Bank National Trust Company in this bankruptcy case,

there is no showing that he is the authorized agent for Deutsche Bank National Trust Company.

As noted by the Chapter 13 Trustee, Proof of Claim No. 1 clearly identifies Deutsche Bank National Trust Company, as Trustee, is the creditor having the claim in this case. That Proof of Claim was filed on October 14, 2014, well in advance of the filing of the present Motion on January 28, 2016.

Additionally, Deutsche Bank National Trust Company or its counsel has appeared in this case on several occasions: (1) August 20, 2014, request for special notice (by counsel Richard Bauer); (2) October 13, 2014, request for special notice (by counsel Alan Wolf, whose law firm appears to have replaced that of Mr. Bauer's); (3) December 10, 2014, Notice of Mortgage Payment Change (executed by an AVP of Bank of America, N.A. as the agent for Deutsche Bank National Trust Company, as Trustee; and (4) April 28, 2015, Notice of Mortgage Payment Change (executed by an AVP of Bank of America, N.A. as the agent for Deutsche Bank National Trust Company, as Trustee.

#### **MISIDENTIFICATION OF CREDITOR IN LOAN MODIFICATION AGREEMENT**

However, the Loan Modification Agreement filed in support of the Motion does not purport to modify a loan with Deutsche Bank National Trust Company, as Trustee, but only modify some loan with Bank of America, N.A. Exhibit "Unnumbered," Dckt. 39. This Agreement appears to have been prepared by Bank of America, N.A. on Bank of America forms.

The cover page (Page 1 of 12) is titled "Modification Agreement (Servicer Copy)." On the first page of the Agreement (Page 2 of 12), in the upper left hand corner it is stated that "This document was prepared by Home Retention Service, Inc."

The only parties to and the terms of this Agreement are summarized as:

- A. Borrowers.....Sheila D. Ray
- B. Lender.....Bank of America, N.A.
- C. Bank of America, N.A. modifies the obligation to.....\$308,410.91
- D. Bank of America, N.A. modifies the interest to be paid for the obligation to.....2%, which increases to 4%.
- E. The Agreement supercedes prior agreement with Bank of America, N.A. concerning modification of the obligation.
- F. Sheila D. Ray agrees to pay Bank of America, N.A. all of the amounts due as amended by the Agreement.
- G. Agreement is signed by Sheila D. Ray.
- H. Agreement is signed by Bank of America, N.A., as a principal without disclosure of any authority to act as an agent.

On multiple prior occasions Bank of America, N.A. has executed Notices of Mortgage Payment Change stating that it is merely an agent and not the creditor. Proof of Claim No. 1 has not been amended and there is no assignment of Proof of Claim No. 1 to Bank of America, N.A.

While most likely there has been an "innocent" preparation of a document which purports to have the less sophisticated consumer debtor enter into a loan modification agreement with a bank which is not a creditor, proper loan modification documentation is required. On a more ominous note, such misidentifications could lead a secondary or tertiary debt buyer to deny that there has been any modification of the loan (or such misidentification is intentional to spring the ineffective modification on the less sophisticated consumer debtor after years of payment and the debtor creating a significant equity in the property of the bank).

**CONTINUANCE OF HEARING TO AFFORD THE PARTIES  
THE OPPORTUNITY TO ADDRESS THE CONCERNS OF THE COURT**

The court will not deny the Motion, which might be mis-perceived as an excuse for Deutsche Bank National Trust Company, as Trustee, and Bank of America, N.A. as an excuse to revoke the loan modification.

Therefore, the court continues the hearing on the Motion to 3:00 p.m. on March 22, 2016.

Further, the court shall issue an order to appear requiring:

- A. The court shall conduct a further hearing on the Motion to Approve a Loan Modification filed by Debtor Sheila Ray and orders the following persons and their respective attorneys to appear at 3:00 p.m. on March 22, 2016, to address their respective issues relating to the Loan Modification Agreement presented to the court.
- B. A senior management representative of Bank of America, N.A., with counsel of the Bank's choice, with personal knowledge of the purported loan modification with Bank of America, N.A. in this case, to appear and advise the court of the basis for Bank of America, N.A. entering into the Loan Modification Agreement with the Debtor in this case, which identifies Bank of America, N.A. as the creditor with the obligation being modified for a claim against the Debtor;
- C. A senior management representative of Deutsche Bank National Trust Company, as Trustee Under The Pooling And Servicing Agreement Relating To IMPAC Secured Assets Corp., Mortgage Pass-Through Certificates, Series 2007-1 ("Deutsche Bank National Trust Company, as Trustee"), with counsel of the Trust Company's, with personal knowledge of the claim asserted by Deutsche Bank National Trust Company, as Trustee, in this case, the purported loan modification with Bank of America, N.A. in this case, and whether Deutsche Bank National Trust Company, as Trustee, continues to assert a claim in this case, is entitled to receive any payments on the obligation upon which Proof of Claim No. 1 is based, and if such claim and the obligation upon

which it is based has been transferred to Bank of America, N.A.;

- D. Written responses, supported by credible, admissible, properly authenticated evidence, shall be filed and served by Bank of America, N.A. and Deutsche Bank National Trust Company, as Trustee, respectively, on the Debtor, counsel for the Debtor, the Chapter 13 Trustee, and the U.S. Trustee (Sacramento Office, attn: Antonia Darling, Esq.), on or before March 15, 2016;
- E. A modified Loan Modification Agreement, if any, naming the actual creditor who is entering into the contract to modify the loan with the Debtor in this case shall be filed and served on the above on or before March 15, 2016.
- F. No telephonic appearances are permitted for the senior management representative for Bank of America, N.A., Deutsche Bank National Trust Company, as Trustee, and their respective attorneys.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Sheila Ray having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Motion to Approve Loan Modification is continued to 3:00 p.m. on March 22, 2016.

**Tentative Ruling:** The Motion to Extend Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 3, 2016. By the court's calculation, 20 days' notice was provided. 14 days' notice is required.

The Motion to Extend the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<b>The Motion to Extend the Automatic Stay is granted.</b>
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Thomas and Shannon Shumate ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past year. The Debtor's prior bankruptcy case (No. 15-25565) was dismissed on January 7, 2016, after Debtor failed to make plan payments. See Order, Bankr. E.D. Cal. No. 15-25565, Dckt. 40, January 7, 2016. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to the Debtor thirty days after filing of the petition.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the



subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if the Debtor failed to perform under the terms of a confirmed plan. *Id.* at § 362(c)(3)(C)(i)(II)(cc). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008). Courts consider many factors – including those used to determine good faith under §§ 1307(c) and 1325(a) – but the two basic issues to determine good faith under § 362(c)(3) are:

1. Why was the previous plan filed?
2. What has changed so that the present plan is likely to succeed?

*Elliot-Cook*, 357 B.R. at 814-815.

Here, Debtor states that the instant case was filed in good faith and provides an explanation for why the previous case was dismissed, as Debtor Thomas Shumate is a self-employed landscaper and due to the drought, his business has been hurt. The Debtor has realigned the business to do no water landscaping and has a job offer in San Jose to help make the current plan payments. The Debtor state that the bankruptcy was filed to stop the foreclosure sale of their property. Now, with the job offer and refocused landscaping business, the Debtor asserts that they can make plan payments in the new case. The Debtor also note that in the prior case, the Debtor overvalued certain property, namely a Dodge Charger, which led to a higher than expected plan payment. The Debtor states that this has been corrected.

The Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Extend the Automatic Stay filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and the automatic stay is extended pursuant to 11 U.S.C. § 362(c)(3)(B) for all purposes and parties, unless terminated by operation of law or further order of this court.

\* Clerk Noticed Hearing

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 10, 2015. By the court's calculation, 75 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 1, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 20, 2016. By the court's calculation, 34 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to continue the hearing on the Objection to 3:00 p.m. on March 22, 2016. Debtor shall file Opposition, Supplemental Pleadings, and any proposed amendments to the plan now before the court on or before March 4, 2016. Replies, if any, shall be filed and served on or before March 12, 2016.**

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Debtor's plan calls for a lump sum payment of \$18,000.00 from the sale of the Debtor's real property ("Oakland Property") no later than month 14 of the plan. The Trustee objects to this because the Debtor has not proven an ability to make payments and the Debtor has not shown that she has passed the liquidation analysis. Namely, the Trustee argues that, due to the skeptical nature of the proposed sale, there should be a provision that has a default if the residence is not sold. Additionally, the Trustee argues that the Debtor has not established the value of the property.
2. The Trustee argues that the adequate protection payments in Class 2 for "Wells Fargo Home Mortgage" are not sufficient. Additionally, the Trustee notes that only the second deed of trust creditor has filed a Proof of Claim No. 2 and that the Trustee cannot disburse to a claim unless a claim has been filed or the plan provides or the court otherwise orders.
3. The Debtor's plan proposes to pay \$4,075.00 in attorney's fees when only \$4,000.00 is allowed under Local Bankr. R. 2016-1(c)(1). The Debtor reported that she has paid \$1,425.00 prior to filing. Dckt. 9 and Dckt. 1, pg 36. The balance owed should

be \$2,575.00.

4. The Debtor's plan relies on Motion to Value Collateral of Bank of New York Mellon.

The Trustee's objections are well-taken.

As to the Trustee's first objection, the court concurs that the plan is too speculative as to the funding of the plan when the Debtor does not specifically provide mechanism in the case where the property is not sold and if the Debtor does, in fact, pass the liquidation analysis. The Debtor's plan states:

The Debtor want to immediately market the property. Its is estimated that there is some equity in the property which will fund the plan.

Dckt. 7, § 6.04. This is not sufficient to show that the Debtor has satisfied 11 U.S.C. § 1325(a)(4) liquidation analysis nor how much equity the Debtor in fact has in the property. The Debtor does not state how, if there is not actual equity in the property, the plan will be funded otherwise. The nature of the plan as presented is far too speculative that the court nor any other party in interest can, with certainty, determine the feasibility and viability of the plan based on the "maybe" sale of the property in which the Debtor has not provided evidence of its actual value.

In reviewing the Docket, though Debtor's plan is premised on the property being sold, the court cannot file a motion to authorize the employment of a real estate broker to being actively marketing the property for sale. This is not indicative of a debtor who is seeking, in good faith, to confirm a plan that provides for Debtor to "immediately market" the property.

Additionally, the plan does not provide for the Debtor to actually "sell" the property. Rather, Debtor merely promises to "market" the property.

As to the Trustee's second objection, the Trustee alleges that the plan violates 11 U.S.C. § 1325(a)(5)(B)(iii)(II) because the amount of the periodic payments it proposes to pay the creditors in Class 2 are insufficient to provide it with adequate protection during the period of the plan. The creditor cites to *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988), for the proposition that "[a]dequate protection is intended to protect creditors from the diminution in value of their collateral during the pendency of a bankruptcy petition."

*Timbers*, however, interprets the meaning of the phrase "adequate protection" for purposes of 11 U.S.C. § 362. *Timbers*, 484 U.S. at 369-70. 11 U.S.C. § 361 provides that:

[w]hen adequate protection is required under section 362, 363, or 364 ... of this title of an interest of an entity in property, such adequate protection may be provided by (1) requiring the trustee to make a cash payment or periodic cash payments, to the extent that the stay under section 362 of this title ... results in a decrease in the value of such entity's interest in such property.

11 U.S.C. § 361 says nothing about "adequate protection" for purposes of 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and the court will not lightly assume such silence to be unintentional. See, e.g., *In re Digimarc Corp. Derivative Litigation*, 549 F.3d 1223, 1233 (9th Cir. 2008) ("Accordingly, we cannot find in Congress' silence [in one section of an Act] an intent to create a private right of action where it was not silent in creating such a right to similar equitable remedies in other sections of the same Act.").

Neither the Ninth Circuit nor any of its sister circuits has considered the meaning of the phrase "adequate protection" as it is used in 11 U.S.C. § 1325 (perhaps unsurprisingly, since the phrase was only added to the section by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005). However, several bankruptcy courts that have considered the issue have found that payments to creditors with secured claims under § 1325 must always at least equal the amount of depreciation of the collateral. See, e.g., *In re Sanchez*, 384 B.R. 574, 576 (Bankr. D. Or. 2008); *In re Denton*, 370 B.R. 441, 448 (Bankr. S.D. Ga. 2007). The court will apply this rule.

The Trustee's point is well-taken that the Debtor has not shown that the adequate protection payment is sufficient while the speculative nature of the sale of the residence. In the absence of any countervailing evidence, the court accepts the objecting creditor's argument under 11 U.S.C. § 1325(a)(5)(B)(iii)(II), and sustains the objection on this basis, too.

The Plan recognizes Wells Fargo Bank, N.A. as having two secured claims. The claim secured by a second deed of trust is provided for as a \$60,587.10 secured claim in the Additional Provisions to the Plan, § 6.05. While the Debtor is "marketing" the property, an "adequate protection" payment of \$40 a month will be paid.

A \$40 a month payment represents an annual interest rate on \$60,587.10 of 0.6% (six tenths of one percent).

The Plan also provides for Wells Fargo Bank, N.A. claim (identified as Wells Fargo Mortgage in the Plan) in the Additional Provisions, §§ 6.02, 6.04. On Schedules A and D, Debtor lists this claim in the amount of \$334,823.68. Dckt. 1. This claim is to be paid from the sale of the Oakland Property. On Schedule A Debtor states a value of \$420,000.00, and states "asking price will be higher than liquidation value stated" on Schedules A and D. Dckt. 1 at 9, 15. However, the value on the Schedules is the "current value," not a "liquidation value," whatever qualifications a debtor may secretly use to decrease the value of the property.

Further, Debtor states that under the Plan she intends to liquidate the property through an orderly sale. Even a Chapter 7 trustee will market and sell property (whether or real) in a commercially reasonable manner, and not just "dump it" in a liquidation sale (as does a creditor exercising a power of sale under Division Nine of the California Commercial Code) for whatever money happens to walk through the door.

The Plan states that on the \$334,823.68 claim there is a \$35,000 pre-petition arrearage and that the monthly contract payments are \$1,567.49. Plan, Additional Provisions § 6.02. The Plan does not provide for making the \$1,567.49 currently monthly contract payment and an arrearage cure payment, but a \$400.00 a month adequate protection payment. Plan, Additional Provisions

§ 6.04.

Wells Fargo Bank, N.A. has not filed a proof of claim for the \$334,823.68 claim. However, this is not the Debtor's first, or second, recent case. The two prior cases are summarized as follows:

15-24150 - Chapter 13 Case Represented (By Different Counsel Than Current Case	Filed: May 22, 2015 Dismissed: October 19, 2015
	<ol style="list-style-type: none"><li>1. Case dismissed because Debtor was in default in plan payments in excess of \$12,000 and failed to file an amended plan when the court denied confirmation of original Chapter 13 plan. 15-24150; Civil Minutes, Dckt. 42.</li><li>2. The Chapter 13 Plan provided to pay the Wells Fargo Bank, N.A. claims in full as Class 1 Claims. <i>Id.</i>; Plan ¶ 2.08.</li><li>3. On August 31, 2015, Wells Fargo Bank, N.A. filed Proof of Claim No. 5 for its claim secured by the First Deed of Trust against the Oakland Property. 15-24150, Proof of Claim No. 5.<ol style="list-style-type: none"><li>a. The total secured claim amount was stated to be.....\$334,823.68.</li><li>b. The arrearage as of August 31, 2015, was stated to be \$25,299.15</li><li>c. The then current interest rate was 4.892%</li><li>d. The then current monthly contract payments were \$1,554.17.</li><li>e. With a \$309,000 principal balance and a 4.892% interest rate, the estimated monthly interest expense is \$1,259.69. (<math>\\$309,000 \times 0.04892/12 = \\$1,259.69</math>)</li></ol></li></ol>
13-28641 - Chapter 13 Case Represented (By same counsel as in case no. 15-24150	Filed: June 27, 2013 Dismissed: January 29, 2015
	<ol style="list-style-type: none"><li>1. The bankruptcy case was dismissed due to Debtor's default in plan payments, which default was in excess of \$14,000. 13-28641; Motion and Order, Dckts. 77, 81.</li></ol>

It appears that the "adequate protection payments" are fractions of the monthly interest accrual on the principal amount of each obligation. Debtor has not demonstrated how this is "adequate protection."

Using Debtor's valuation, it appears that here is little, if any, possible equity in the Oakland Property for Debtor.

Debtor's Statement of Value.....	\$420,000
Wells Fargo Bank, N.A. Claim Secured by First Deed of Trust.....	(\$340,000)
(The court adjusting for the additional defaults since the August 31, 2015 amount stated by creditor in prior case)	
Wells Fargo Bank, N.A. Claim Secured by Second Deed of Trust.....	(\$ 62,000)
Costs of Sale, Estimated at 8%.....	<u>(\$ 33,600)</u>
Estimated Equity For Debtor.....	(\$ 15,600)

It appears that there would be marginal, if any equity in the Oakland Property for Debtor. Debtor is unable to make a monthly interest payment, but proposes only a significantly discounted "adequate protection" payment.

Such a minimum discounted payment could be warranted if Debtor was showing a substantial equity cushion for the creditor's claims. Even if there was not a shown significant equity cushion, making a modest adequate protection payment could be warranted if the Debtor was actively prosecuting a sale.

As counsel for Debtor is aware, Chapter 13 Plans which provide for the liquidation of real property (as opposed to Debtor making the current and arrearage payments through the plan) are confirmable if they have a twelve month period to have the sale completed, absent some extraordinary circumstances being shown. Here, no extraordinary circumstances are given for why more than a twelve month period is reasonably required to sell residential real property.

While bankruptcy is a "redemptive process," Debtor has been existing in Chapter 13 cases since 2013 - seriously defaulting in payments in the prior two case, which caused them to be dismissed. If, now going on three years, Debtor sought to immediately sell the Oakland Property, it would be listed with a real estate broker and being actively marketed.

It appears from the Debtor's Plan that Debtor is attempting to speculate (at the creditor's expense) that the property may rise in value over the next fourteen months so as to create an equity for Debtor. The proposed "adequate protection" payment does not adequately protect Wells Fargo Bank, N.A. for Debtor so speculating.

Debtor states she has gross income of \$3,942 from employment and an additional \$450.00 of family support payments. Debtor also states she has \$50 from recycle or remove voluntary retirement and \$500.01 income tax credit, monthly. After payment of taxes and insurance, Debtor states she has \$4,051.67 in Monthly Income. Schedule I, Dckt. 1 at 24.

On Schedule J Debtor lists having one dependent. Dckt. 1 at 25. For a family of two persons, and without including mortgage, rent, or property tax expenses, Debtor states their monthly expenses are only \$1,451.67. Schedule



J, *Id.* at 26.

Interestingly, on Schedule I in her second Chapter 13 case Debtor lists higher monthly income on Schedule I, stating it was \$5,241.23. 15-24150, Dckt. 1 at 25. On Schedule J in the second Chapter 13 case, Debtor stated under penalty of perjury that her monthly expenses were only \$941.23. *Id.* at 30. For that case, Debtor stated that any shortfall in money for expenses would be made up by her father. That case was dismissed due to Debtor's substantial defaults and inability to make the plan payments.

In the current case, the Debtor's expenses stated under penalty of perjury do not appear reasonable or credible statements. Some of the shortcomings include:

- a. Food and Housekeeping Supplies for Two Persons.....\$475
  - i. Allowing \$50 for housekeeping supplies, \$425 for food equates to \$2.28 per person, per meal, for a thirty-one day month.
- b. Electricity and Natural Gas.....\$ 75
  - i. No showing has been made for such a low number for these essential utilities.

#### **CONTINUED HEARING**

The court identified the following issues for Debtor, the Trustee, and Creditors in the tentative ruling for the February 23, 2016 hearing. It may well be that Debtor does intend to immediately hire an experience real estate broker who will immediately market the property to get a sale completed within twelve months. Most likely, an experienced real estate broker can have the property marketed and sold by Summer 2016.

Debtor may also want to adjust the adequate protection payments, taking into account Wells Fargo Bank, N.A. holding both the senior and junior liens, it does not face the prospect of having to pay the senior lien to protect the junior lien position on the Oakland Property. Making payments on the senior debt and a very prompt marketing and sale schedule may provide reasonable adequate protection for the junior lien under the specific circumstances of this case.

In light of Debtors two prior Chapter 13 case failures, Debtor may want to provide supplemental pleadings to give the court and creditors a basis for believing that this third bankruptcy case in two years will be the successful one.

As to the Trustee's third objection, it appears to the court that the information listed on the plan was a mere scrivener's error by Debtor's counsel. While this is not an independent ground to deny confirmation, the failure of the Debtor to properly prepare the plan so that the court and any other party in interest can determine the feasibility of the plan when the plan does not accurately detail the attorney's fees.

Lastly, the court granted the Debtor's Motion to Value Collateral of

Bank of New York Mellon on January 26, 2016. Dckt. 36. Therefore, the Trustee's fourth objection is overruled.

However, in light of the court's concerns, the Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Objection to Confirmation is continued to 3:00 p.m. on March 22, 2016. Debtor shall file Opposition, Supplemental Pleadings, and any proposed amendments to the plan before the court on or before March 4, 2016. Replies, if any, shall be filed and served on or before March 12, 2016.

6. [15-29404](#)-E-13 TAEVONA MONTGOMERY  
EAT-1

OBJECTION TO CONFIRMATION OF  
PLAN BY CREDITOR WELLS FARGO  
BANK, N.A.  
1-21-16 [[30](#)]

**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

-----  
Local Rule 9014-1(f)(2) Motion - Set for Final Hearing.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on January 21, 2016. By the court's calculation, 33 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<p>The court's decision is to continue the hearing on the Objection to 3:00 p.m. on March 22, 2016. Debtor shall file Opposition, Supplemental Pleadings, and any proposed amendments to the plan now before the court on or before March 4, 2016. Replies, if any, shall be filed and served on or before March 12, 2016.</p>
--

Wells Fargo Bank, N.A., Creditor, opposes confirmation of the Plan on the basis that the plan does not provide for the full payment of the Creditor's pre-petition arrears.

The Creditor's objections are well-taken.

The objecting creditor holds a deed of trust secured by the Debtor's residence. The creditor has filed a timely proof of claim in which it asserts \$6,661.47 in pre-petition arrearages. The Plan does not propose to cure these arrearages. Because the Plan does not provide for the surrender of the collateral for this claim, the Plan must provide for payment in full of the arrearage as well as maintenance of the ongoing note installments. See 11 U.S.C. §§ 1322(b)(2), (b)(5) & 1325(a)(5)(B). Because it fails to provide for the full payment of arrearages, the plan cannot be confirmed.

However, the court has addressed in detail the foibles of Debtor's current plan and Debtor's prior Chapter 13 failures in connection with the Trustee's Objection to Confirmation. DCN: DPC-1. Debtor may be able to address those in an opposition to the Trustee's Objection and this Creditor's Objection.

Additionally, if Debtor desires to provide for the prompt, commercially reasonable sale of the real property securing Creditor's claims, then Debtor may immediately hire a real estate broker and get the property marketed. For residential real property, Debtor should be able to get it sold by Summer 2016.

Rather than having the parties expend the time of coming to court and listening to Debtor's promise to do something in the future, the court sets a briefing schedule and final hearing on the objection.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Objection to Confirmation is continued to 3:00 p.m. on March 22, 2016. Debtor shall file Opposition, Supplemental Pleadings, and any proposed amendments to the plan now before the court on or before March 4, 2016. Replies, if any, shall be filed and served on or before March 12, 2016.

7. [15-29404](#)-E-13 TAEVONA MONTGOMERY  
MDE-1

OBJECTION TO CONFIRMATION OF  
PLAN BY U.S. BANK, N.A.  
12-11-15 [[14](#)]

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 11, 2015. By the court's calculation, 74 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<p><b>The court's decision is that hearing on the Objection to Confirmation is continued to 3:00 p.m. on March 22, 2016.</b></p> <p>Debtor shall file Opposition and Supplemental Pleadings on or before March 4, 2016. Replies, if any, shall be filed and served on or before March 12, 2016..</p>
--

U.S. Bank, N.A., Creditor, opposes confirmation of the Plan on the basis that:

1. The plan fails to cure the pre-petition arrears of the Creditor.
2. The plan fails to provide how the Debtor will be able to make all payments under the plan given the speculative nature of the sale of the residence.

The Creditor's objections are well-taken.

As to the Creditor's first objection, the court concurs that the plan is too speculative as to the funding of the plan when the Debtor does not specifically provide mechanism in the case where the property is not sold and if the Debtor does, in fact, pass the liquidation analysis. The Debtor's plan states:

The Debtor want to immediately market the property. Its is estimated that there is some equity in the property which will fund the plan.

Dckt. 7, § 6.04. This is not sufficient to show that the Debtor has satisfied 11 U.S.C. § 1325(a)(4) liquidation analysis nor how much equity the Debtor in

fact has in the property. The Debtor does not state how, if there is not actual equity in the property, the plan will be funded otherwise. The nature of the plan as presented is far too speculative that the court nor any other party in interest can, with certainty, determine the feasibility and viability of the plan based on the "maybe" sale of the property in which the Debtor has not provided evidence of its actual value.

As to the Creditor's second objection, the Creditor holds a deed of trust secured by the Debtor's residence. The creditor has failed to file a proof of claim. The Objection states that the plan provides for the curing of the arrears in the amount of \$25,100.00. However, the Creditor asserts that the approximate amount in arrears is \$27,243.64.

Unfortunately, the Creditor does not provide any evidence of the arrears in the form of a declaration or proof of claim or account statement. Instead, the Creditor merely states the \$2,143.64 in arrears in the Objection without admissible evidence.

#### **CONTINUED HEARING**

However, the court has addressed in detail the foibles of Debtor's current plan and Debtor's prior Chapter 13 failures in connection with the Trustee's Objection to Confirmation. DCN: DPC-1. Debtor may be able to address those in an opposition to the Trustee's Objection and this Creditor's Objection.

Additionally, if Debtor desires to provide for the prompt, commercially reasonable sale of the real property securing Creditor's claims, then Debtor may immediately hire a real estate broker and get the property marketed. For residential real property, Debtor should be able to get it sold by Summer 2016.

Rather than having the parties expend the time of coming to court and listening to Debtor's promise to do something in the future, the court sets a briefing schedule and final hearing on the objection.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Creditor U.S Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the hearing on the Objection to Confirmation is continued to 3:00 p.m. on March 22, 2016. Debtor shall file Opposition and Supplemental Pleadings on or before March 4, 2016. Replies, if any, shall be filed and served on or before March 12, 2016.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 30, 2015. By the court's calculation, 39 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
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Jim Ledesma ("Debtor") filed the instant Motion to Confirm the Modified Plan on October 30, 2015. Dckt. 89.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on November 23, 2015. Dckt. 103. The Trustee opposes on the following grounds:

1. Peter Macaluso, who filed the instant Motion on behalf of the Debtor, has not yet been substituted in as the Debtor's attorney. The Trustee opposes the Motion as the plan is ambiguous where it refers to "Debtor's attorney's fees" to be paid in the plan.

2. The Debtor's proposed plan indicates a 2.00% distribution to unsecured creditors while the Debtor's declaration indicates a 0.00% dividend. The confirmed plan has a distribution of 2.00% and the Trustee has disbursed 2.00% to date. The Trustee opposes the modification if it is attempting to reduce the amount to unsecured claims below what was previously paid.
3. Debtor does not provide an explanation as to why the proposed plan payment is for an amount that is less than his monthly net income or why the Debtor proposes to reduce the plan payment in month 53. Debtor proposes a plan payment of \$79,945.61 total paid in through October 2015 (month 45), \$2,675.00 for 7 months, then \$2,425.00 for 8 months to complete the plan. The Debtor's supplemental Schedule J and J reflects a monthly net income of \$2,765.84. Dckt. 96.
4. The Trustee is uncertain whether the Debtor has the ability to make the plan payments unless other people are paying for some of Debtor's expenses. The Debtor's declaration state that his expenses increased because the Debtor's son now lives with him full time. However, the Debtor's original Schedule J and the supplemental Schedule J indicates a reduction in expenses from \$2,065.66 to \$812.00. Debtor budgets \$0.00 for electricity, heat, natural gas, water, sewer, and garbage collection. The Debtor's childcare expenses remain \$0.00, food was reduced from \$500.00 to \$300.00, and clothing was reduced from \$50.00 to \$40.00. Additionally, the Trustee notes that the Debtor's supplemental Schedule I indicates that the Debtor now is employed by the State of California and receives income from rent or business which was previously not disclosed. The Debtor does not provide explanation of this additional income nor does the Debtor's Statement of Financial Affairs include business information.

#### **DEBTOR'S REPLY**

The Debtor, through Mr. Macaluso, filed a reply to the Trustee's opposition on November 30, 2015. Dckt. 106. The Debtor, through Mr. Macaluso, responds as follows:

1. The Debtor allegedly signed the substitution of counsel and that the order approving the substitution is pending court approval.
2. The percentage to unsecured claims was intended to remain 2.00%.
3. The reduction in expenses is due to the assistance of his new girlfriend who has afford to contribute \$1,000.00 to the Debtor towards plan payments. The reply states that the contribution is for the next seven months. The assistance is based on expenses which are projected to increase by a total of \$250.00 after seven months, to include further needs of the children.



## **DECEMBER 8, 2015 HEARING**

At the hearing, the Counsel for Debtor reported that he has been ill, which has delayed his response. Dckt. 108. The court continued the hearing to January 26, 2016 at 3:00. The court ordered that any supplemental pleadings filed by Debtor shall be on or before January 8, 2016, reply if any filed by January 15, 2016.

## **SUPPLEMENTAL DECLARATION OF DEBTOR**

On January 12, 2016, the Debtor filed a supplemental declaration. Dckt. 116. The Declaration states the following:

1. That since the filing of this case, the mother of my children died which has thrown my life into a mess.
2. Since then I have tried to rent my house to my daughter Dominique Parker and her family in which I am receiving \$900.00 per month.
3. I have also moved into my girlfriend's home, Laurie Garcia whom has allowed me to basically live for free and provide \$200 to allow my [sic] to make ends meet and keep my plan active.
4. The sudden changes with my ex-wife's death have made for these major changes so that I can complete my plan as intended.

## **DECLARATION OF LAURIE GARCIA**

Laurie Garcia, the Debtor's girlfriend, filed a declaration on January 12, 2016. Dckt. 117. Ms. Garcia states the following:

1. I understand that my significant other is in a Chapter 13 bankruptcy case and which I am intending to help him for the balance of the plan.
2. That subject to this plan I am willing to provide a home free of charge and \$200 to allow him to meet his needs and the requirements of the plan payments to the Chapter 13 Trustee.
3. That I can afford to make this payment each month for as long as the assistance is needed.

## **TRUSTEE'S SUPPLEMENTAL RESPONSE**

The Trustee filed a supplemental response on January 13, 2016. Dckt. 111. The Trustee begins by stating that the Debtor failed to file any supplemental papers by the January 8, 2016 deadline.

The Trustee states that at the hearing on December 8, 2015, the Trustee was provided handwritten declarations from the Debtor and two identical handwritten declarations of Debtor's girlfriend, Laurie Green. The Debtor's Declaration states that the Debtor is now renting out his home to family and is moving in with his girlfriend where he will have no rent or utilities.

Debtor states that there has been struggles since the death of his children's mother and his son is now with him full time. The Debtor's handwritten declaration indicates that there unexpected expenses such as dental expenses and vehicle expenses.

The Trustee then addresses the status of his own objections in turn:

1. A substitution of attorney was filed on December 14, 2015 (Dckt. 109) and an order granting the substitution was entered December 18, 2015 (Dckt. 110). This resolves the Trustee's objection.
2. The Debtor's reply indicates that the percentage to unsecured creditors remains 2.00%.
3. The Debtor's reply as to the reduction in plan payment indicates that the Debtor's girlfriend is assisting the Debtor in making the plan payments for the next 7 months. The assistance is based on projected expenses which will increase by \$250.00 due to needs of the children. The court found this explanation to be insufficient (Dckt. 108). Namely, the court was concerned that the Debtor did not file a declaration of the girlfriend regarding her willingness to contribute.
4. The Trustee remains uncertain if the Debtor can afford the plan payments. The Debtor's supplemental Schedule J indicates a reduction in expenses from \$2,065.55 to \$812.00. The supplemental Schedule J budgeted \$0.00 for electricity, heat, natural gas, water, sewer and garbage. The Debtor budgeted \$0.00 for education though the Debtor states that he now does actually have these costs. Additionally, the Debtor's food and clothing expenses went down, even though the Debtor now has his son living with him. Furthermore, the Debtor's medical and dental budget has remained \$20.00 even though the Debtor states that his son has braces. The Debtor's supplemental declarations does not sufficiently address the changes in expenses, nor gives specifics as to the renting of his property to his sister.

#### **JANUARY 26, 2016 HEARING**

At the hearing, the court continued to 3:00 p.m. on February 23, 2016 to allow the Debtor to address the Trustees concerns. Dckt. 122.

#### **DISCUSSION**

To date, the Debtor has failed to file any supplemental papers since the continued hearing.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

First, Mr. Macaluso has been properly substituted in as the Debtor's counsel. Therefore, the Trustee's first objection is overruled.

However, the Trustee's remaining objections are still well-taken.

Even reviewing the reply filed by Mr. Macaluso although it was improper, the explanation as to the expense reduction and the supplemental assistance is insufficient to confirm the plan. The reply states that the Debtor's girlfriend has agreed to contribute to expenses during the next seven months. While the Debtor does provide the declaration of the "girlfriend" which states under penalty of perjury her willingness to contribute to the household, the budget still appears to be inaccurate. The Debtor admits to having expenses such as the Debtor's son's braces yet does not increase the Debtor's medical/dental budget. Even more, though, the reply admits that the expenses and the proposed plan is not an actual representation of the Debtor's financial reality. Instead, it is a "hypothetical" budget that does not account for the contribution from the "girlfriend" but rather reduces expenses that the Debtor actually has and then having a step down in payments after the contribution ends. This financial "mirage" makes it impossible for the court to determine whether the plan is actually feasible.

Rather than providing this information at the time the Motion was filed, with accurate declarations and accurate supplemental budgets, Mr. Macaluso, filed a proposed plan premised on contribution from the girlfriend and the expected reduction in expenses. This is inappropriate.

The supplemental declarations filed by the Debtor and Debtor's girlfriend do not rectify these concerns. Rather, the Debtor appears to only address the willingness of his girlfriend to provide housing and additional funds to the Debtor. However, the Debtor still has not provided an accurate financial budget in order for the court, Trustee, and other interested parties to determine if the plan is feasible. The court will not confirm a plan that is based on rough estimates of the Debtor's finances. The Debtor's budget does not account for the girlfriend's contribution nor his daughter's rental of his property. These additional sources of income come to at least \$1,000.00 a month that is not reported in the Debtor's schedules.

Therefore, the modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

9. [16-20007](#)-E-13 BRENDA GLOVER  
DPC-1

OBJECTION TO DISCHARGE BY DAVID  
P. CUSICK  
1-27-16 [[17](#)]

**Tentative Ruling:** The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*) and Office of the United States Trustee on January 27, 2016. By the court's calculation, 27 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

**The Objection to Discharge is overruled.**

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on January 27, 2016. Dckt. 17.

Unfortunately, the Objector has not provided sufficient notice. The Objector states that the Objection is being made pursuant to Local Bankr. R. 9014-1(f)(1), which requires a minimum of 28-days notice. Here, the Objector only provided 27 days.

Therefore, due to the insufficient notice, the Objection is overruled.

The court shall issue a minute order substantially in the following form

holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Discharge filed by the David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is overruled.

**THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING  
IF MOVANT CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED  
RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES**

### **ALTERNATIVE RULING**

David Cusick, the Chapter 13 Trustee ("Objector"), filed the instant Objection to Debtor's Discharge on January 27, 2016. Dckt. 17.

The Objector argues that Brenda Glover ("Debtor") is not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case.

The Debtor filed a Chapter 7 bankruptcy case on May 22, 2015. Case No. 15-24163. The Debtor received a discharge on September 8, 2016. Case No. 15-21463, Dckt. 15.

The instant case was filed under Chapter 13 on January 4, 2016

11 U.S.C. § 1328(f) provides that a court shall not grant a discharge if a debtor has received a discharge "in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter." 11 U.S.C. § 1328(f)(1).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on September 8, 2016, which is less than four-years preceding the date of the filing of the instant case. Case No. 15-21463, Dckt. 15. Therefore, pursuant to 11 U.S.C. § 1328(f)(1), the Debtor is not eligible for a discharge in the instant case.

Therefore, the objection is sustained. Upon successful completion of the instant case (Case No. 16-20007), the case shall be closed without the entry of a discharge and Debtor shall receive no discharge in the instant case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Discharge filed by the David Cusick, the Chapter 13 Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to Discharge is sustained.

**IT IS ORDERED** that, upon successful completion of the instant case, Case No. 16-20007, the case shall be closed without the entry of a discharge.

10. [15-29508](#)-E-13 CAROLYN GREEN

HEARING RE: CONFIRMATION OF  
PLAN  
12-8-15 [[5](#)]

**\* Clerk Noticed Hearing**

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 17, 2015. By the court's calculation, 68 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before

confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 6, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed



order to the court.

12. [12-35317](#)-E-13 JOHN VIRGEN AND ELIZABETH MOTION TO MODIFY PLAN  
SJS-1 LOWERY-VIRGEN 1-14-16 [[54](#)]

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2016. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
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John Virgen and Elizabeth Lowery-Virgen ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 14, 2016. Dckt. 54.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 9, 2016. Dckt. 65. The Trustee opposes confirmation on the following grounds:

1. The plan will take 74 months to complete due to the Debtor

undervaluing the priority claims.

2. The plan terms state that the Debtor has paid a total of \$29,969.00 to the Trustee through November 19, 2015 and that beginning January 26, 2016, the monthly payments shall be \$440.00 for the remainder of the plan. However, the Plan does not provide for a payment in December and that the Debtor intended payments to be \$29,969.00 total paid in through December 2015 with monthly plan payments of \$440.00 commencing January 26, 2016 for the remainder of the plan.
3. The Trustee is uncertain whether the plan is Debtor's best efforts. The Trustee notes that the plan payments were supposed to increase due to the completion of child support obligations. However, the Debtor is currently in month 42 of the plan and the Debtor has not increased plan payments. The Debtor's Schedule J filed in support of the Motion includes the \$992.00 for support payment, which is the same as it was prior.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objections are well-taken.

Debtor is in material default under the plan because the plan will complete in more than the permitted 60 months. According to the Trustee, the plan will complete in 74 months due to the Debtor undervaluing the priority claims, namely the California State Disbursement Unit for Yolo County. This exceeds the maximum 60 months allowed under 11 U.S.C. § 1322(d). Therefore, the objection is sustained.

As to the Trustee's second objection, the plan does not accurately reflect what payments have been made to date and what the continuing plan payment should be. While the court and the Trustee seem to believe that this was a scrivener's error, the fact that the plan does not provide sufficient monies to pay priority claimants within 60 months and the Debtor not providing all necessary information as to the feasibility of the plan, the objection is sustained.

Lastly, the plan does not appear to be the Debtor's best effort. As stated in the order confirming the prior plan, the plan payments were to increase in month 30 due to completion of child support obligations. Dckt. 19. However, the Debtor has not initiated such nor provides any explanation as to why the step up payments have not begun. The Debtor's supplemental Schedule J continues to indicate that the Debtor has an ongoing support obligation of \$992.00. The failure of the Debtor to address this discrepancy raises serious concerns over whether the plan is, in fact, the Debtor's best efforts. The

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

13. [16-20219-E-13](#) MAUREEN CLINE  
SDH-2

AMENDED MOTION TO VALUE  
COLLATERAL OF CALIFORNIA CHECK  
CASHING STORES, LLC  
1-20-16 [[18](#)]

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 20, 2016. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of California Check Cashing Stores, LLC ("Creditor") is granted and the secured claim is determined to have a value of \$3,500.00.**

The Motion filed by Maureen Cline ("Debtor") to value the secured claim

of California Check Cashing Stores, LLC ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2002 BMW 325ci (the "Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$3,500.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Debtor states that, while the lien on the Vehicle's title was incurred on February 7, 2014 to secure a debt owed to Creditor with a balance of approximately \$6,458.47. While this is less than 910 days prior to filing, the lien here was not a non-purchase money security interest as the loan was not used to acquire the Vehicle. Dckt. 15.

While the Debtor has not attached any loan or security agreement to support that claim, the testimony of the Debtor, signed under the penalty of perjury, is sufficient. The Debtor is reminded that admissible evidence, such as the security agreement, would allow for the court and parties in interest to have proof that the purchase was non-purchase money security interest, rather than relying solely on the testimony of the Debtor.

Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$3,500.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Maureen Cline ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of California Check Cashing Stores, LLC ("Creditor") secured by an asset described as 2002 BMW 325ci ("Vehicle") is determined to be a secured claim in the amount of \$3,500.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$3,500.00 and is encumbered by liens securing claims which exceed the value of the asset.

\* Clerk Noticed Hearing

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 18, 2015. By the court's calculation, 67 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 9, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

15. [15-28322](#)-E-13 LISA TOLBERT  
SJS-1

**AMENDED MOTION TO VALUE  
COLLATERAL OF SANTANDER  
CONSUMER USA, INC.  
1-13-16 [[35](#)]**

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 13, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of Santander Consumer USA, Inc. ("Creditor") is granted and the secured claim is determined to have a value of \$7,315.00.**

The Motion filed by Lisa Tolbert ("Debtor") to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2010 Honda Civic LX ("Vehicle"). The

Debtor seeks to value the Vehicle at a replacement value of \$7,315.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in February, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$16,945.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,315.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Lisa Tolbert ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA, Inc. ("Creditor") secured by an asset described as 2010 Honda Civic LX ("Vehicle") is determined to be a secured claim in the amount of \$7,315.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,315.00 and is encumbered by liens securing claims which exceed the value of the asset.

16. [15-28322-E-13](#) LISA TOLBERT  
SJS-2

MOTION TO VALUE COLLATERAL OF  
MILESTONZ JEWELERS  
1-13-16 [[37](#)]

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 13, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of Milestonz Jewelers ("Creditor") is granted and the secured claim is determined to have a value of \$1,525.00.**

The Motion filed by Lisa Tolbert ("Debtor") to value the secured claim of Milestonz Jewelers ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of silver and gold necklaces and bracelets ("Jewelry") The Debtor seeks to value the Jewelry at a replacement value of \$1,525.00 as of the petition filing date. FN.1. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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FN.1. The Court notes that the Motion and Declaration value the Jewelry at \$1,525.00, while the Notice values the Jewelry at \$1,103.00.  
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The lien on the Jewelry secures a purchase-money loan incurred in May, 2007, which is more than one year days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$2,628.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$1,525.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to



Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Lisa Tolbert ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Milestonz Jewelers ("Creditor") secured by an asset described as gold and silver necklaces and bracelets ("Jewelry") is determined to be a secured claim in the amount of \$1,525.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$1,525.00 and is encumbered by liens securing claims which exceed the value of the asset.

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2015. By the court's calculation, 57 days' notice was provided. 28 days' notice is required.

The Motion to Approve Loan Modification has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve Loan Modification is granted.**

The Motion to Approve Loan Modification filed by Christopher and Gail Brown ("Debtor") seeks court approval for Debtor to incur post-petition credit. America's Servicing Company ("Creditor") has agreed to a loan modification which will reduce Debtor's mortgage payment to \$1,216.67 per month, which includes principal and interest payment.

The Debtor notes that this is a trial loan modification. The Debtor state that they will offer a finalized modification following the trial period. The Motion states that the Debtor will be filing a modified plan to allow Debtor to pay the trial modification payments directly to the lender as a Class 4 claimant.

The Motion is supported by the Declaration of Debtor. The Declaration affirms Debtor's desire to obtain the post-petition financing and provides evidence of Debtor's ability to pay this claim on the modified terms.

A review of the information and the Proof of Claim shows America's Servicing Company is not, in fact, the creditor but rather that "U.S. Bank National Association as Trustee" is the actual creditor. Proof of Claim No. 4. Nothing in the Proof of Claim nor the Motion provides the grounds for America's

Servicing Company to offer a loan modification on behalf of the real creditor.

The court will not authorize a loan modification when the real creditor is not named or when the agent of the creditor does not provide evidence that they are authorized to enter into loan modification on behalf of the real creditor.

While the court agrees that it appears that the loan modification would be in the best interest of the Debtor, the court will not authorize a "maybe effective" loan modification without the real creditor or a party with authority to do so, is presented.

However, in light of the instant Motion and the modification being in the best interest of the Debtor and the estate, the court will approve the trial loan modification, subject to final approval of the final modification.

The trial modification is approved with America's Servicing Company, acting as the agent.

The final loan modification agreement must be between the real parties in interest and the Debtor. If the modification is executed by an agent, the principal be disclosed and the agent must clearly show that it is signing as an agent to bind a principal.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve the Loan Modification filed by Christopher and Gail Brown having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the court authorizes Christopher and Gail Brown ("Debtor") to amend the terms of the loan with America's Servicing Company as an agent, which is secured by the real property commonly known as 260 Sumatra Drive, Sacramento, California, on such terms as stated in the Trial Modification Agreement filed as Exhibit A in support of the Motion, Dckt. 59, subject to final approval of any permanent modifications.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 28, 2015. By the court's calculation, 57 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to grant the Motion to Confirm the Modified Plan.</b>
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Christopher and Gail Brown ("Debtor") filed a Motion to Confirm the Modified Plan on December 28, 2016. Dckt. 61.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 9, 2016. Dckt. 66. The Trustee objects on the ground that the Motion is based on the approval of a trial loan modification with Americas Servicing Company. The Trustee states that the Debtor's plan does not provide for a provision if the trial modification is entered into but no actual modification takes plan.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objection is well-taken.

On February 23, 2016, the court granted the Motion to Approve the Loan Modification on a trial basis, with final court approval necessary for any final loan modifications offered.

The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by creditors. The Trustee's objection has been resolved with the granting of the Motion to Approve Loan Modification. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 28, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Amended Plan.</b>
--

William Hamilton ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 6, 2016. Dckt. 94.

#### **TRUSTEE'S OPPOSITION**

David Cusick, Chapter 13 Trustee, filed an opposition to the instant Motion on February 9, 2016. Dckt. 106. The Trustee opposes confirmation on the ground that the Debtor's plan indicates that \$1,500.00 shall be paid through the plan for attorney's fees but fails to propose a dividend to administrative expenses in Section 2.07.

#### **DISCUSSION**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee's opposition is well-taken. A review of the plan shows that

the Debtor does not propose a dividend for the administrative expense in Section 2.07 of the plan. However, the Debtor does indicate that the plan payment should include \$1,500.00 in attorney's fees. Without the plan accurately calculating all necessary payments, the court and other parties in interest cannot determine if the plan is viable and feasible. The Debtor has not provided a supplemental declaration clarifying this discrepancy.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 35 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
---

Dickie and Gail Hill ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 19, 2016. Dckt. 55.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 9, 2016. Dckt. 63. The Trustee opposes confirmation on the ground that the Debtor is \$200.00 delinquent in plan payments.

#### **DEBTOR'S SUPPLEMENTAL DECLARATION**

Debtor Dickie Hill filed a supplemental declaration on February 16, 2016. Dckt. 66. The Debtor declares that he has been released to work by his doctor and found employment as a medical records reviewer at a law office. The Debtor states that he has the same income as was budgeted when the first



amended plan. The Debtor promises to mail a cashier's check to the Trustee to cure the delinquency.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The basis for the Trustee's objection is that the Debtor is \$200.00 delinquent in plan payments. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Unfortunately, the Debtor has not provided evidence that the delinquency has been cured.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
---

Adam Silber ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 12, 2016. Dckt. 55.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 9, 2016. Dckt. 66. The Trustee opposes confirmation on the grounds that the plan is not the Debtor's best effort. The Debtor's supplemental Schedules I and J reflect monthly net income of \$3,932.14. However, the Trustee states that the pay advices furnished by the Debtor ending June 21, 2015 showed an approximate net monthly income of \$4,259.00, which is \$327.00 greater than scheduled.

The Trustee additionally notes that there is an additional expense of \$600.00 listed on Schedule J for spousal support. However, the Debtor did not report any spousal support at the time of filing. The Debtor's Statement of Financial Affairs indicates an ex-spouse and also that there was a transfer of

property to the ex-spouse in December 2007. The Debtor has not provided any proof of payments or a court order for spousal support to the Trustee.

#### **DEBTOR'S REPLY**

The Debtor filed a reply on February 16, 2016. Dckt. 69. The Debtor states that the Debtor's income is based on the end of year totals. The Trustee's opposition is allegedly based on income from June 21, 2015. The Debtor asserts that the Schedules are based on the end of the year totals.

Additionally, the Debtor states that the Debtor is willing to provide further evidence to substantiate the domestic support obligation payment to ex-spouse. The Debtor states that the support was pending at the time of filing and this is the first request the Debtor has received concerning the domestic support obligations.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objection is well-taken. The plan does not appear to be the Debtor's best efforts.

The court first notes that Debtor's reply does not include any evidence, but merely the arguments of counsel which are not based on any evidence presented to the court.

The Debtor did provide a declaration with the Motion to Confirm. Dckt. 57. He provides his updated financial information using the schedule I and J forms, filed as Exhibits 2 and 6, in support of the Motion. Dckt. 58.

This bankruptcy case was filed in September 2013. Therefore, it would not be surprising that some financial information has changed. But with that change, the Debtor needs to explain the change.

Amended Schedules I and J upon which confirmation of the plan in this case was confirmed in 2014, were filed on November 25, 2016. Dckt. 23. On Amended Schedule I Debtor lists gross income of \$3,949.20. After deductions for taxes, 401, and health insurance, Debtor states his Average Monthly Income was \$2,788.14. Amended Schedule I, Dckt. 23 at 7-8. Debtor lists on Amended Schedule I that he has no dependants, listing his marital status as "Divorced." *Id.* at 7.

On Amended Schedule J, Debtor lists \$2,313.24 in monthly expenses. *Id.* at 9. These include: (1) \$600.00 for rent, (2) \$400 for food, (3) \$247 for auto payment, and (4) \$400 for transportation (gas, repairs, registration).

On the Statement of Financial Affairs, Debtor states that he transferred real property to his ex-spouse in December 2007. Statement of Financial Affairs, Question 10; Dckt. 1. Debtor states in response to Statement of Financial Affairs Question 4 that there were no suits in which the Debtor was involved pending at the time of or a party to within one year of the commencement of the bankruptcy case.

There is no mention of any children or the Debtor having any obligation

of support to children or ex-spouse in the Statement of Financial Affairs and the Amended Schedules I and J executed by Debtor under penalty of perjury in this case.

For the current financial information, Debtor states that his gross income has risen to \$6,004.02 a month. Exhibit 2, Dckt. 58 at 3. Though his employer is the same as listed on Amended Schedule I in 2015(Dckt. 23), on the schedule I form filed as Exhibit 2 Debtor states that he has been employed for only six months. Dckt. 58 at 3.

From the \$6,004.02 Debtor states that he has (\$2,071.88) in deductions for taxes, mandatory retirement contribution, and insurance. *Id.* Debtor now states he has \$3,932.14 in Average Monthly Income.

On the schedule J form used as Exhibit 3 to show Debtor's current expenses, Debtor now lists having two children who are dependants, ages 10 and 13. Dckt. 58 at 5. Debtor now states his expenses have risen to (\$3,656.24), which when deducted from the higher income results in Debtor having \$275.90 on Monthly Net Income. *Id.* at 6.

Debtor states that "now" he has custody of his children 50% of the time. Debtor does not state when this occurred. Additionally, Debtor states that he pays spousal support. Again, Debtor does not state when this occurred.

While Debtor's counsel argues that Debtor is now "willing" to provide information about his obligation to pay spousal support, it was the Debtor's obligation to be forthcoming and honest about his finances when making his original declaration to the court. While "willing," Debtor chose (or was unwilling) to do so in a reply declaration.

Debtor also fails to provide any information for now having some support obligation for his two children ages 10 and 13 years old. This obligation has existed since the case was filed, but not disclosed. The existence of the children was not disclosed on Amended Schedule I filed in 2013 and now comes to light only when Debtor seeks to lower his plan payment. Again, Debtor is unable (or unwilling) to provide testimony under penalty of perjury to support his attorney's arguments.

Finally, Debtor's counsel merely argues that looking at the June 2015 income Debtor projects going forward having less income in 2016 than projected by the Trustee. But Debtor fails to provide any evidence for this contention. Just as Debtor was not forthcoming about having children, the children being dependants, and some spousal support obligation, the court does not find credible Debtor's counsel arguing that 2016 income will be lower than projected by the Trustee.

The budget information provided for by the Debtor indicates conflicting information that makes determination of whether the plan is feasible and viable impossible. The Debtor, in his reply, appears to "conclude away" the discrepancies by stating that the information is based on year end totals, rather than the income information provided for by the Debtor, and that this is the first time any request as to the DSO has been requested.

It is not the Trustee's responsibility, nor the court's, to drag begrudgingly from the Debtor truthful, accurate testimony and evidence to

support Debtor's contentions. The Debtor, after having received an increase in pay or had an order requiring the Debtor to pay spousal support, should have reported this to the Trustee and other parties through a supplemental Schedules I and J and supplemental Statement of Financial Affairs to properly reflect the changes. The Debtor is responsible for informing the parties of any changes to their financial reality.

In the instant case, the Debtor has not provided any necessary information and evidence to determine if the plan payments are possible nor any information as to the ongoing support obligation. Without this information, confirmation is impossible.

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

\* Clerk Noticed Hearing

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 17, 2015. By the court's calculation, 68 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
---

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

\* Clerk Noticed Hearing

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 20, 2015. By the court's calculation, 65 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
---

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the



Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 10, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

24. [15-28638](#)-E-13 JOSEPH TARR AND GINA  
DPC-1 CHAVES

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
12-16-15 [[16](#)]

**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtor's Attorney on December 16, 2015. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the

U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

**The court's decision is to sustain the Objection.**

David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. Debtor may not be able to make the plan payments. Debtor's Schedule I indicates gross income for Debtor Joseph Tarr of \$6,445.00. Schedule I further states that Debtor is receiving \$2,720.00 per month in EDD Disability benefits, which will end December 1, 2015. The Debtor will use a severance package to fund the plan until he returns to work after the benefits end. The Debtor stated at the Meeting of Creditors that he does not have any of the income listed on Schedule I, column 1. Debtor also testified that the severance package he received was a total of \$25,000.00. According to Schedule B, Debtor stated that the Debtor's total cash, bank and debit card balances at \$4,759.74. Debtor does not appear to have the income listed on Schedule I or the severance package to fund the plan.

#### **JANUARY 12, 2016 HEARING**

At the hearing, the court continued the hearing on the Objection to 3:00 p.m. on February 23, 2016. Debtor was ordered to file and serve opposition January 29, 2016, and Replies, if any, were ordered to be filed and served by February 5, 2016. Dckt. 22.

#### **DEBTOR'S SUPPLEMENTAL REPLY**

The Debtor filed a reply on January 29, 2016. Dckt. 29. The Debtor states that Debtor Joseph Tarr has secured employment with Lanz Cabinet as well as with Uber to increase his income. Debtor also states that plan payments will be able to be made through the use of Debtor Tarr's severance package. Debtor states that there are no amendments anticipated to the plan.

#### **TRUSTEE'S RESPONSE**

The Trustee filed a response on February 3, 2016. Dckt. 32. The Trustee states that the Debtor does not offer any evidence as to the amount of the new income. The Trustee states that he received an email from Debtor's counsel which included an offer letter from Lanz Cabinet indicating gross salary of \$55,000.00. Another document is a profit and loss sheet for Uber, indicating that in December 2015, the Debtor made \$484.43 and \$800.00 in January 2016. The last document received by the Trustee is a bank statement from Chase Bank Account ending in 1308, which shows an ending balance of \$10,697.33 from November 25, 2015 through December 22, 2015.

The Debtor has not filed supplemental Schedules I and J. While providing a declaration, it does not provide any evidence of income and expenses.

The Trustee states, based on the information sent from Debtor's counsel, that the Debtor's monthly income with the new employment is approximately \$5,225.54. However, the Debtor's current Schedule I indicates a monthly net income of \$6,445.00, which is approximately \$1,219.46 less than what the Trustee currently calculates.

The Trustee concludes that, based on the information provided for by the Debtor, between the income and the severance package, the Trustee estimates that the severance package, if indicated by the Chase Account, is not sufficient and will be exhausted in nine months.

## **DISCUSSION**

The Trustee's objections are well-taken. Based on the testimony provided for by the Debtor at the Meeting of Creditors, the Debtor admitted that Schedule I does not accurately reflect the Debtor's financial reality. In fact, the Debtor admitted that an entire column on Schedule I is no longer income.

While the Debtor did submit a declaration concerning their income, the declaration concerned the calculations under the Means Test rather than the accuracy of the Debtor's Schedules. The Declaration is little more than Debtor's personal finding of fact that he believes he can make the payment. This does not provide the court with evidence to make such determination as the finding of fact, and without that evidence the court cannot make the conclusion of law that the plan is confirmable.

The Debtor's supplemental reply falls short of addressing the Trustee's concerns. The Debtor gives vague information as to the new employment and the severance package. Without specifics or updated budgets, the court nor any other party in interest can determine whether the plan is viable.

The Trustee's objection is sustained as it appears, based on the information provided by the Debtor, that the Debtor cannot afford to make plan payments. 11 U.S.C. § 1325(a)(6).

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained without prejudice and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** The Objection to Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Internal Revenue Service on January 27, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----  
-----.

**The court's decision is to sustain the Objection.**

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor may not be able to make the plan payments. The Trustee asserts that the Debtor admitted at the Meeting of Creditors that the Debtor's employer received a letter from the Internal Revenue Service directing the withholding of taxes from the Debtor's wages as of the first pay period after February 15, 2016. The Trustee states that based on the information contained in the letter, the Internal Revenue Service is requiring that the Debtor comply with a withholding rate of a single as to marital status and zero withholding allowances.

The Trustee argues that, where the Debtor is unmarried and has two dependents, the Trustee believes that the Debtor may no longer be able to

afford the plan payment. Furthermore, the Trustee asserts that the Debtor may no receive a tax refund after the 2015 tax period.

The Trustee's objections are well-taken.

The Trustee alleges that the Plan is not feasible because the Debtor can no longer afford plan payments, See 11 U.S.C. § 1325(a)(6), due to the Internal Revenue Service taking post-petition action to withhold taxes from Debtor's wages. This leads to the Debtor not having sufficient income to fund the plan and also creates the concern that the Debtor will have a refund that should be paid into the plan. Thus, the plan may not be confirmed.

Schedule I by the Debtor lists gross income of \$18,000.00 a month, with tax deductions of \$7,100.00 a month. Dckt. 1 at 36. The Debtor states at the bottom of Schedule I that he believes there will be a change in the tax deduction because "Debtor has been going tax exempt." *Id.* The court is unsure how the tax deduction will increase or decrease from the \$7,100.00 amount based on the statement "Debtor has been going tax exempt."

The court notes that the Internal Revenue Service has filed Proof of Claim No. 2, which asserts a tax debt in the amount of \$57,994.11 (\$45,085.38 is asserted as a priority unsecured claim). The California Franchise Tax Board has filed Proof of Claim No. 5, which asserts a tax debt of \$8,373.81 (\$6,699.05 is asserted as a priority unsecured claim).

On Schedule J, Debtor computes that he has Net Monthly Income of \$2,156.00. Dckt. 1 at 38. Debtor lists having two dependents, ages 17 and 5. For the family of three, Debtor states that the necessary and reasonable monthly expenses are \$8,513.00. These include: (1) \$1,925 for rent/mortgage, (2) \$435 for phone/cable, (3) \$1,000 for food and housekeeping supplies, (4) \$1,000.00 for childcare, (5) \$300 for clothing and laundry, (6) \$300.00 for personal care products, (7) \$450.00 for transportation, (8) \$250.00 for clubs and entertainment, (9) \$60.00 for charitable contributions, (10) \$340.00 for car payment, and (11) \$1,350 for alimony and support not deducted from pay. *Id.* 38-39.

From gross income of \$18,000.00, Debtor's plan is to make plan payments of \$2,156 a month, pay his nondischargeable taxes, and make a 45% dividend to creditors having general unsecured claims. While a forty-five percent dividend may appear to be significantly higher than most Chapter 13 plan, the Debtor's monthly income of \$18,000.00 is astronomically greater than debtors in other Chapter 13 cases.

It appears that Debtor's lifestyle changes little from obtaining the extraordinary benefits available through a Chapter 13 case. Along the way, he gets to discount his creditors 55%, and then stretch them out interest free for sixty months. The Debtor's expenses and budget calculation are not indicative of a Debtor seeking relief under the Bankruptcy Code in good faith.

Further, while stating that he has a monthly support obligation (in addition to the significant household expenses listed), on the Statement of Financial Affairs Debtor does not state any dissolution action which is pending in state court from which such a domestic support obligation was issued.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The

objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
---

Laqueta Martin ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 7, 2016. Dckt. 70.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 9, 2016. Dckt. 81. The Trustee objects to the Motion based on the ground that the Debtor's plan does not include the following language as to the plan payments:

"As of December 25, 2015, the Debtors shall have paid 2,760.00 into the plan. Beginning January 25, 2016 the Debtor's plan payment shall be \$253.00 for the remainder of the plan."

The Trustee additionally notes that the Debtor is delinquent \$152.00

under the proposed modified plan.

#### **DEBTOR'S REPLY**

The Debtor filed a reply on February 16, 2016. Dckt. 84. The Debtor states that the language proposed by the Trustee would correct the ambiguity in the plan payments as stated in the plan.

As to the delinquency, the Debtor states that she will be current by the time the Motion is heard.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Unfortunately, the Debtor fails to provide sufficient notice to creditors. Reviewing the Debtor's proof of claim, the Debtor only served the U.S. Trustee, the Chapter 13 Trustee, and the Debtor. Dckt. 26. The Debtor failed to provide sufficient notice to all parties in interest. Local Bankruptcy Rule 3015-1 deals with the procedure necessary for a modified plan to be confirmed. Rule 3015-1(d)(2) states:

In order to comply with both Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1), parties-in-interest shall be served at least thirty-five (35) days prior to the hearing.

While the Debtor provided 48 days notice to herself, the Chapter 13 Trustee, and the U.S. Trustee, the Debtor failed to serve any other party in interest, namely creditors. The failure to do so is independent ground to deny confirmation.

The Trustee's objections are well-taken. While the court does agree that the plan payments would be clarified if the order confirming contained the additional language as proposed by the Trustee, the Debtor has failed to provide evidence that the Debtor is current under the proposed plan. The Debtor's delinquency indicates the Plan is not feasible, and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.



27. [15-28843](#)-E-13 MARIA ANDRICHUK  
DPC-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
1-13-16 [[28](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The case having previously been dismissed, the Objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

28. [15-28843](#)-E-13 MARIA ANDRICHUK  
DPC-3

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
1-14-16 [[32](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The case having previously been dismissed, the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Exemptions having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

29. [15-28843](#)-E-13 MARIA ANDRICHUK  
EAT-1

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY  
NATIONSTAR MORTGAGE LLC  
1-12-16 [[21](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The case having previously been dismissed, the Objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

30. [16-20144](#)-E-13 GLENDA STERN  
MET-1

MOTION TO VALUE COLLATERAL OF  
CAPITAL ONE AUTO FINANCE  
1-21-16 [[15](#)]

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

-----  
Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 21, 2016. By the court's calculation, 33 days' notice was provided. 28 days' notice is required.

The Motion to Value secured claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of Capital One Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of \$19,775.00.**

The Motion filed by Glenda Stern ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2013 Hyundai Santa Fe Sport AWD ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$19,775.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in June 22, 2013, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$22,100.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$19,775.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Glenda Stern ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Capital One Auto Finance ("Creditor") secured by an asset described as 2013 Hyundai Santa Fe Sport AWD ("Vehicle") is determined to be a secured claim in the amount of \$19,775.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$19,775.00 and is encumbered by liens securing claims which exceed the value of the asset.

31. [15-27953](#)-E-13 SHARON PHELPS  
JLB-1

MOTION TO CONFIRM PLAN  
1-11-16 [[40](#)]

**Final Ruling: No appearance at the February 23, 2015 hearing is required.**  
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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 27, 2016. By the court's calculation, 27 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Amended Plan.</b>
--

Sharon Phelps ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 11, 2016. Dckt. 40.

## TRUSTEE'S OBJECTION

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on January 27, 2016. Dckt. 67. The Trustee objects on the following grounds:

1. The Motion failed to provide sufficient notice.
  - a. The proof of service was filed on January 11, 2016. Dckt. 26. The service is not sufficient as it fails to notice the U.S. Attorney for Internal Revenue Service pursuant to the Roster of Government Agencies as required Fed. R. Bankr. P. 2002(b).
  - b. On January 25, 2016, Debtor filed Amended Notice of Hearing on Motion to Confirm Amended Plan changing the hearing date from February 23, 2016 to February 9, 2016, reducing the notice from 43 days to 30 days notice. Dckt. 65.
  - c. In the amended plan, Debtor changes class 1 creditor from Everhome Mortgage to Nationstar Mortgage. Debtor lists on Schedule D Everhome Mortgage secured by real property at 4500 El Caminito Road, Shingle Springs, California. Debtor has failed to file an amended Schedule D.
2. The Debtor's plan includes additional provisions which may not comply with applicable law.
  - a. The plan does not propose equal distribution payments to the secured claim of Spartan Home Loans. The plan does not account for money previously paid to Spartan Home Loans. The plan's additional provisions has an additional monthly payment called for Spartan arrears. Additionally, the provisions does not give specifics as to the length of the payments, using such language as "approximately."
  - b. The Plan calls for a specific dividend to the Trustee, rather than estimating the dividend. The fee is determined by 28 U.S.C. § 586(e) and the plan attempts to alter that by setting the Trustee fee.
3. The Debtor's plan relies on the authorization of the pending Motion to Use Cash Collateral.
4. The Debtor has failed to disclose where the \$1,100.00 per month for income taxes will be held throughout the year or if and when she will make quarterly tax payments to the IRS and Franchise Tax Board. The Trustee requests that Debtor set up a separate account for her monthly deposit of \$1,00.00 and that Debtor report quarterly to the Trustee bank statements proving the deposits are being made. At the end of each year and upon payment of the year's tax liability, any net balance in the tax account should be paid into the plan as an additional payment. The Trustee also would like the Debtor to provide copies of

each year's tax returns to verify the income and taxes are accurately reported.

#### **CREDITOR'S OBJECTION**

Kenneth Liewellyn ("Creditor") filed an objection to the instant Motion on February 28, 2016. Dckt. 83. The Creditor objects on the following grounds:

1. Insufficient notice has been provided.
2. The Creditor does not consent to the use of his cash collateral except for payments on his promissory note, insurance on the property, real property taxes, and utilities which are the responsibility of the Debtor. Since the Debtor relies on the cash collateral authorization, the Debtor cannot make the payments.
3. The Creditor objects to the 7% interest proposed in the plan. The Creditor asserts that the contract rate is 13% and is consistent with a loan secured by a commercial property to a high risk borrower.
4. The note is matured and the Debtor improperly attempts to divide the payment between the arrearage and the full mature amount.
5. The Debtor proposes unequal treatment for Class 2 claimants.

#### **DEBTOR'S SUPPLEMENTAL DECLARATION**

The Debtor filed a supplemental declaration on February 16, 2016. Dckt. 91. The Debtor states that due to the objections by the Creditor and the Trustee, the Debtor will be filing a second amended plan and setting a new motion.

The Debtor states that she has met with other professional to propose different alternatives for reorganization. The Debtor states that she is investigating the option of selling some equity ownership interest. The Debtor states that it will take approximately one month to finalize a deal and to propose a plan.

#### **DISCUSSION**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Debtor having filed a supplemental declaration for the pending Motion, stating that she needs to file a new proposed amended plan, the court construes this as a recognition of such significant issues with the plan that Debtor does not continue in the prosecution of the Motion. Therefore, based on the objections and the Debtor indicating that Debtor is not continuing in advocating for this Motion, the Motion is denied.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied.

32. 15-27953-E-13 SHARON PHELPS  
JLB-3

MOTION TO USE CASH COLLATERAL  
1-27-16 [74]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The Debtor having filed a "Withdrawal of Motion" for the pending Motion to Use Cash Collateral (Dckt. 75.), the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion, and good cause appearing, **the court dismisses without prejudice the Debtor's Motion to Use Cash Collateral.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A Motion to Use Cash Collateral having been filed by the Debtor, the Debtor having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Motion to Use Cash Collateral is dismissed without prejudice.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
---

Jessica Belloso ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 6, 2016. Dckt. 22.

**TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, filed an objection to the instant Motion on February 9, 2016. Dckt. 32. The Trustee objects to confirmation on the following grounds:

1. The Trustee is unclear of the proposed plan payments. The modified plan lists proposed plan payments as \$558.00 for 60 months and the Debtor is delinquent having paid only \$1,072.00 in the first 7 months of the plan.
2. The Debtor fails to provide current statement of income and statement of expenses. The Debtor is proposing an increased plan payment from \$508.00 to \$558.00. However, the Debtor fails



to provide a Supplemental I and J with updated income and expenses.

#### **DEBTOR'S REPLY**

The Debtor filed a reply on February 16, 2016. Dckt. 35. As to the Trustee's first objection, the Debtor states that this can be proposed in the order confirming by adding the following language:

As of January 25, 2016 the Debtor shall have paid into the plan \$504.00. Beginning February 25, 2016, the Debtor's plan payments shall be \$558.00 for the remainder of the 60 month plan.

As to the Trustee's second objection, the Debtor states that it was an error on behalf of the Debtor in failing to include the amended budget.

#### **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

Unfortunately, the Debtor fails to provide sufficient notice to creditors. Reviewing the Debtor's proof of claim, the Debtor only served the U.S. Trustee, the Chapter 13 Trustee, and the Debtor. Dckt. 26. The Debtor failed to provide sufficient notice to all parties in interest. Local Bankruptcy Rule 3015-1 deals with the procedure necessary for a modified plan to be confirmed. Rule 3015-1(d)(2) states:

In order to comply with both Fed. R. Bankr. P. 3015(g) and LBR 9014-1(f)(1), parties-in-interest shall be served at least thirty-five (35) days prior to the hearing.

While the Debtor provided 48 days notice to herself, the Chapter 13 Trustee, and the U.S. Trustee, the Debtor failed to serve any other party in interest, namely creditors. The failure to do so is independent ground to deny confirmation.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

34. [15-27054-E-13](#) YUVANA NUNEZ  
DPC-1

MOTION TO VALUE COLLATERAL OF  
CAPITAL ONE AUTO FINANCE  
12-17-15 [[37](#)]

**Tentative Ruling:** The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

-----  
Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on December 17, 2015. By the court's calculation, 68 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<p><b>The Motion to Value secured claim of Capital One Auto Finance ("Creditor") is granted and the secured claim is determined to have a value of \$7,000.00.</b></p>
--

The Motion filed by Yuvana Nunez ("Debtor") to value the secured claim of Capital One Auto Finance ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2011 Toyota Corolla ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$7000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in July 10, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$11,149.21. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The creditor's secured claim is determined to be in the amount of \$7,000.00. See 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Yuvana Nunez ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Capital One Auto Finance ("Creditor") secured by an asset described as 2011 Toyota Corolla ("Vehicle") is determined to be a secured claim in the amount of \$7,000.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$7,000.00 and is encumbered by liens securing claims which exceed the value of the asset.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 16, 2015. By the court's calculation, 69 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to grant the Motion to Confirm the Amended Plan.</b>
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Yuvana Nunez ("Debtor") filed the instant Motion to Confirm the Amended Plan on December 17, 2015. Dckt. 32. FN.1.

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FN.1. The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party failed to use a new Docket Control Number for the instant Motion. Rather, the Debtor reuses the DCN that was assigned to the Trustee's Objection to Confirmation. The counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l). However, the court waives this defect for purposes of the instant Motion.

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**TRUSTEE'S OBJECTION**

David Cusick, the Chapter 13 Trustee, filed an objection to the instant

Motion on February 2, 2016. Dckt. 41. The Trustee objects on the basis that the plan relies on the Debtor's Motion to Value Collateral of Capital One Auto Finance.

#### **DISCUSSION**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

A review of the Debtor's plan shows that it relies on the court valuing the secured claim of Capital One Auto Finance. On February 23, 2016, the court granted the Debtor's Motion to Value. Therefore, the Trustee's objection is overruled.

Therefore, with no objections remaining and upon independent review of the plan, the amended Plan complies with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 16, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The Debtor having filed a subsequent proposed amended plan and Motion to Confirm on January 19, 2016 (Dckt. 21 and 25), the court construing the filing of an amended plan as a withdrawal of the plan filed on December 4, 2015, the court interpreting the "Withdrawal" to be an election to dismiss the prior plan pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041, and good cause appearing, **the court denies confirmation of the Debtor's plan filed on December 4, 2015.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A plan having been filed by the Debtor, the Debtor having filed a proposed amended plan, the court construing such as an election to dismiss the prior plan filed December 4, 2015 pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and good cause appearing,

**IT IS ORDERED** that the Debtor's plan filed on December 4, 2015 is not confirmed, having been dismissed voluntarily by Debtor.

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

-----  
Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Value has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Value secured claim of Beneficial California, Inc. ("Creditor") is granted and Creditor's secured claim is determined to have a value of \$00.00.**

The Motion to Value filed by Michael and Kaylene Yandel ("Debtor") to value the secured claim of Beneficial California, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of the subject real property commonly known as 560 West F Street, Dixon, California ("Property"). Debtor seeks to value the Property at a fair market value of \$257,072.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See Fed. R. Evid. 701; see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent**

of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) [emphasis added]. For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

### **Proof of Claim Filed**

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Proof of Claim No. 7 filed by "Beneficial Financial I Inc., successor by merger to Beneficial California Inc." is the claim which may be the subject of the present Motion..

### **DISCUSSION**

The senior in priority first deed of trust secures a claim with a balance of approximately \$278,568.00. Creditor's second deed of trust secures a claim with a balance of approximately \$27,241.66. Therefore, Creditor's claim secured by a junior deed of trust is completely under-collateralized. Creditor's secured claim is determined to be in the amount of \$0.00, and therefore no payments in the secured amount of the claim shall be made on the secured claim under the terms of any confirmed Plan. See 11 U.S.C. § 506(a); *Zimmer v. PSB Lending Corp. (In re Zimmer)*, 313 F.3d 1220 (9th Cir. 2002); *Lam v. Investors Thrift (In re Lam)*, 211 B.R. 36 (B.A.P. 9th Cir. 1997). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Michael and Kaylene Yandel ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Beneficial California, Inc. secured by a second in priority deed of trust recorded against the real property commonly known as 560 West F Street, Dixon, California, is determined to be a secured claim in the amount of \$0.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Property is



\$257,072.00 and is encumbered by senior liens securing claims in the amount of \$278,568.00, which exceed the value of the Property which is subject to Creditor's lien.

38. [15-29455-E-13](#) EMMA GILL

HEARING RE: CONFIRMATION OF  
PLAN  
12-4-15 [[5](#)]

\* Clerk Noticed Hearing

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 16, 2015. By the court's calculation, 69 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
---

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or

creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

39. [15-28961](#)-E-13 JOSE GODINEZ  
DPC-2

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
1-14-16 [[32](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 14, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The objection to claimed exemptions is sustained and the exemptions are disallowed in their entirety.**

The Trustee objects to the Debtor's use of the California exemptions without the filing of the spousal waiver required by California Code of Civil Procedure §703.140. California Code of Civil Procedure §703.140, subd. (a)(2), provides:

If the petition is filed individually, and not jointly, for a husband or a wife, the exemptions provided by this chapter other than the provisions of subdivision (b) are applicable, except that, if both the husband and the wife effectively waive in writing the right to claim, during the period the case commenced by filing the petition is pending, the exemptions provided by the applicable exemption provisions of this chapter, other than subdivision (b), in any case commenced by filing a petition for either of them under Title 11 of the United States Code, then they may elect to instead utilize the applicable exemptions set forth in subdivision (b).

(Emphasis added). The court's review of the docket reveals that the spousal waiver has not been filed. The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is sustained and the claimed exemptions are disallowed in their entirety.

40. [15-29663](#)-E-13 MICHAEL WALKER  
DPC-1

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
1-26-16 [[14](#)]

WITHDRAWN BY M.P.

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The Chapter 13 Trustee having filed a "Withdrawal of Objection" for the pending Objection to Debtor's Claim of Exemptions, the "Withdrawal" being consistent with the opposition filed to the Objection, the court interpreting the "Withdrawal of Objection" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Objection to Debtor's Claim of Exemptions, and good cause appearing, **the court dismisses without prejudice the Chapter 13 Trustee's Objection to Debtor's Claim of Exemptions.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

An Objection to Debtor's Claim of Exemptions having been filed by the Chapter 13 Trustee, the Chapter 13 Trustee having filed an ex parte motion to dismiss the Objection without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Objection being consistent with the opposition filed, and good cause appearing,

**IT IS ORDERED** that the Objection to Debtor's Claim of Exemptions is dismissed without prejudice.

41. [15-29663](#)-E-13 MICHAEL WALKER  
DPC-2

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-27-16 [[18](#)]

WITHDRAWN BY M.P.

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 27, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion.

**The court's decision is to dismiss the Objection as requested by the Trustee, the Debtor having filed an amended plan.**

David Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that the Debtor cannot make the plan payments due to the rent increase and the failure to provide for the car expense in the plan.

#### **DEBTOR'S OPPOSITION**

The Debtor filed an opposition on February 9, 2016. Dckt. 37. The Debtor states that the Debtor has filed an amended plan and Motion to Confirm the Amended Plan on February 9, 2016, which is set for hearing for March 22, 2016, which addresses the Trustee's concerns.

#### **TRUSTEE'S WITHDRAWAL**

The Trustee filed a Notice of Withdrawal on February 10, 2016, citing the Debtor's newly filed proposed plan and Motion to Confirm.

#### **DISCUSSION**

A review of the docket shows that the Debtor filed a proposed amended plan and Motion to Confirm on February 9, 2016. Dckt. 31 and 35.

A summary review of the Motion and declaration in support appear to be consistent with the pleading requirements of Fed. R. Bankr. P. 9013 (stating grounds with particularity) and the Declaration appears to provide testimony as to facts to support confirmation based upon her personal knowledge (Fed. R.

Evid. 601, 602).

The Debtor have acted to amend the plan and doing so in a manner consistent with the Federal Rules of Bankruptcy Procedure and Federal Rules of Evidence, the court construes the subsequent Motion as a withdrawal on the instant Motion to Confirm.

Therefore, in light of the newly filed amended plan and Motion to Confirm, the objection is dismissed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is dismissed at the request of the Chapter 13 Trustee. The Plan is not confirmed, the Debtor having filed an Amended Plan on February 9, 2016, and motion to confirm, which is now set for hearing on March 22, 2016.

**Tentative Ruling:** The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 13 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on February 8, 2016. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Value secured claim was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

<p><b>The Motion to Value secured claim of Santander Consumer USA, Inc., dba Chrysler Capital ("Creditor") is granted and the secured claim is determined to have a value of \$29,398.00.</b></p>
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The Motion filed by Michael Walker ("Debtor") to value the secured claim of Santander Consumer USA, Inc., dba Chrysler Capital ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2014 Chrysler 300 ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of \$22,225.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. See Fed. R. Evid. 701; see

also *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The lien on the Vehicle's title secures a purchase-money loan incurred in July 6, 2014, which is less than 910 days prior to filing of the petition.

Movant is requesting that the loan held by Creditor be determined to be secured in the amount of \$29,398.00 and that the negative equity carried into the loan from a trade-in of Debtor's prior vehicle in the amount of \$5,754.81 be determined to be an unsecured claim.

The Creditor filed a Proof of Claim No. 3 on January 6, 2016, claiming a secured claim in the amount of \$34,997.81. A review of the Retail Installment Contract filed as an attachment to Creditor's Proof of Claim No. 3 shows that the total amount financed by the Movant was \$36,325.74. There was a net trade-in of <-\$5,754.81>. Essentially, the total amount financed is two separate loans: (1) for the negative net equity in the trade-in and (2) the new financing for the Vehicle.

Out of the total amount financed, the negative equity arising from the trade-in is 16% of the amount financed and the remaining 84% is new financing secured as a purchase money security interest in the new Vehicle. Applying these percentages to the amount claimed by the Creditor in Proof of Claim No. 3, \$5,754.81 of the amount financed is to the negative net equity from the trade-in. The remaining \$29,398.00 is the amount loaned to secure the purchase of the Vehicle.

While the portion of the financing secured by the new Vehicle is a purchase money security interest acquired less than 910 days prior to the filing which prevents the Movant from valuing the claim under the hanging paragraph of 11 U.S.C. § 1325(a), the Movant is only seeking to value the portion of the financing that was for the negative net equity of the trade-in, not the actual purchase of the Vehicle.

In the 9th Circuit, negative equity is not considered a part of the price for the new vehicle, and is thus not included in the purchase money security interest. *In re Penrod*, 611 F.3d 1158,1161-62 (9th Cir 2009) *petition for rehearing denied*, 636 F.3d 1175 (2011), *cert denied* 132 S.Ct. 108 (2011). Debtor may value this portion of the secured claim which relates to the negative equity financed in addition to the purchase price.

The definition of a "purchase money security interest is determined by state law. *In re Penrod*, 611 F.3d 1158,1161-62 (9th Cir 2009) *petition for rehearing denied*, 636 F.3d 1175 (2011), *cert denied* 132 S.Ct. 108 (2011). Cal. Comm. Code § 9103 "does not provide a precise definition of a purchase money security interest, but rather a string of connected definitions." *In re Penrod*, 611 F.3d at 1161; Cal. Comm. Code § 9103.

In *Penrod*, the Ninth Circuit Court of Appeals quoted the plain language of the California Commercial Code, stating,

"'Purchase money collateral' means goods or software that secures a purchase money obligation." Cal. Comm. Code § 9103(a)(1)." 'Purchase money obligation' means an obligation of an obligor incurred as all or part of the price



of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used." Cal. Comm. Code § 9103(a)(2).

*In re Penrod*, 611 F.3d at 1161.

The California Commercial Code defines the term "good" to be,

"(44) 'Goods' means all things that are movable when a security interest attaches. The term includes (I) fixtures, (ii) standing timber that is to be cut and removed under a conveyance or contract for sale, (iii) the unborn young of animals, (iv) crops grown, growing, or to be grown, even if the crops are produced on trees, vines, or bushes, and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if (I) the program is associated with the goods in such a manner that it customarily is considered part of the goods, or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money, or oil, gas, or other minerals before extraction."

Ca. Com. Code § 9102(44). Physical "things" are included in the definition, but contracts, claims, instruments, letters of credit, and other non-physical "things" are not included.

Here, Debtor purchased a vehicle (a thing) and obtained additional credit to finance the negative equity that was in the vehicle that the seller agreed to take as a trade-in. The court organizes the various purchases and obligations as follows:

Purchase of New 2014 Chrysler 300	Source Document - Retail Installment Sale Contract. Exhibit A, Dckt. 25	
Purchase Price of Vehicle (Cash Price Day of Sale)	\$30,589.00	Price of Collateral
Document Processing	\$80.00	Documentation as part of purchase of vehicle
Sales Tax	\$2,415.18	Though This is Not a Tax Which the Purchaser is Obligated to Pay, but a Tax Which the Seller is Obligated to Pay, the Court includes it as part of the actual necessary cost in buying the vehicle. FN.1.

Electric Vehicle Registration	\$29.00	Cost with above purchase price.
Vehicle License	\$198.00	Estimated cost with above purchase price.
Registration	\$101.00	Estimated cost with above purchase.
California [illegible] fees	\$8.75	Cost with above purchase.
Total obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	\$36,820.93	

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FN.1. As discussed by the California Court of Appeal in *Xerox Corp. v. County of Orange*, 66 Cal. App. 3d 746, 756 (1977), the state sales tax is not a tax on the sale, but an excise tax imposed upon the retailer for the "privilege of conducting a retail business...." See Cal. Rev. & Tax. Code § 6051 (stating that tax is imposed on retailer). A retailer is allowed to add the sales tax to the sales price under specified circumstances (which is the common practice in California). Cal. Civ. Code § 1656.1.  
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In addition to the credit extended for the purchase of the vehicle, the Creditor extended further creditor to purchase or finance these additional items:

Item	Source Document - Retail Installment Sale Contract. Exhibit 2, Dckt. 19	
Service Contract	\$2,500.00	This is a form of optional "insurance," in which the insurer is obligated to provide payments during a specified period for repairs required to the vehicle.
GAP Insurance Coverage	\$900.00	This is another form of insurance that the Creditor chose to finance, rather than having the Debtor provide evidence of insurance.

Negative Equity in Trade-In	\$5,754.81	This negative equity which Creditor chose to provide additional credit is not part of the purchase money obligation as determined by the court in <i>Penrod</i> .
Total obligation incurred not as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral	\$9,154.81	

As discussed by the court in *Penrod*, creditors are given some extraordinary rights for purchase money financial and a purchase money lien. While extraordinary rights are given, the California Legislature carefully circumscribed the obligations which would be so protected.

The Debtor does not attempt to value the optional insurance coverage but rather just the negative net equity.

Therefore, based on the foregoing, creditor's secured claim is determined to be in the amount of \$29,398.00. See 11 U.S.C. § 506(a). The remaining \$5,754.81 is determined to be a general unsecured claim arising from the negative equity from the trade-in. The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Michael Walker ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion pursuant to 11 U.S.C. § 506(a) is granted and the claim of Santander Consumer USA, Inc., dba Chrysler Capital ("Creditor") secured by an asset described as 2014 Chrysler 300 ("Vehicle") is determined to be a secured claim in the amount of \$29,398.00. This is the amount of the secured claim which pursuant to the "hanging paragraph" of 11 U.S.C. § 1325(a) [the unnumbered paragraph following § 1325(a)(9)], and the balance of the claim, \$5,754.81, is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$22,225.00 and is encumbered by liens securing claims which exceed the value of the asset.

\* Clerk Noticed Hearing

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

-----  
Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 16, 2015. By the court's calculation, 69 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
---

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the

Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 4, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

44. [09-26667](#)-E-13 JOSE/ROBIN GONZALEZ  
DPC-1

CONTINUED MOTION TO CONVERT  
CASE TO CHAPTER 7  
5-12-15 [[91](#)]

**Final Ruling: No appearance at the February 23, 2015 hearing is required.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Office of the United States Trustee on May 12, 2015. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion to Convert the Bankruptcy Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 7 is dismissed without prejudice.**

This Motion to Dismiss the Chapter 13 bankruptcy case of Jose and Robin Gonzalez ("Debtor") has been filed by David Cusick, the Chapter 13 Trustee.

The Trustee states that the plan was completed on May 9, 2014 and the order approving the Trustee's Final Report was filed on July 9, 2014. The

discharge of the Debtor was filed on July 29, 2014. The sexual harassment complaint was filed on July 9, 2013. The order reopening the case was filed on August 28, 2014.

The Debtor's Schedules B and C were amended on August 28, 2014 to include the contingent and unliquidated claims regarding the sexual harassment and workers compensation with the values listed as "unknown" and exempting \$3,000.00 for the harassment case and \$2,680.00 for the workers compensation claim.

The Trustee states that he is unable to find information in the Yuba County Court regarding the workers compensation case. Case no. YBCT-550301.

As to the sexual harassment case, the Trustee discovered that the trial is set to begin on August 24, 2015. District Court for the Eastern District of California, Case No. 2:13-CV-01368. However, the Trustee notes that it has been requested by the parties for the trial to be continued to September 28, 2015 and for discovery to be continued as well. The Trustee states that, based on the case, it is not apparent what, if any, award the Debtor would receive.

The Trustee argues that since the Final Report has been approved and the discharge of the Debtor entered, the Trustee does not know of what purpose to be served to administer the underlying reopened Chapter 13 case. The Trustee argues that the case should be converted to a Chapter 7, where a Chapter 7 Trustee would be better able to step into the Debtor's position and realized an award which could then be distributed to creditors.

#### **DEBTOR'S RESPONSE**

The Debtor filed a response to the instant Motion on May 18, 2015. Dckt. 96. The Debtor states that they reopened the Chapter 13 case in order to list additional assets, namely the two pending state and federal cases. The Debtor argues that the Trustee has offered no authority that a Chapter 7 liquidation would be proper merely because the Chapter 7 Trustee may be better at distributing any funds that may be received.

The Debtor states that there is a distinct possibility that Debtor Robin Gonzalez may not win anything in the lawsuits, leaving nothing to be done. If Debtor Robin Gonzalez does prevail, she may have to pay additional money to the Chapter 13 Trustee. The Debtor states that instead of converting, closing the case until such assets become available, if any, would be a possible solution.

The Debtor filed a supplemental response on May 26, 2015. Dckt. 98. The Debtor states that after speaking with the trial attorney, the Debtor does not wish for their case to be closed, but instead want the case to remain open as a Chapter 13. The Debtor also notes that the Trustee was unable to find any information concerning the workers compensation case because it was filed in Yolo County and not Yuba County.

#### **RULING**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must

be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9<sup>th</sup> Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9<sup>th</sup> Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause....

11 U.S.C. § 1307(c). The court engages in a "totality-of circumstances" test, weighing facts on a case by case basis in determining whether cause exists, and if so, whether conversion or dismissal is proper. *In re Love*, 957 F.2d 1350 (7<sup>th</sup> Cir. 1992). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. *Nady v. DeFrantz (In re DeFrantz)*, 454 B.R. 108, 113 FN.4, (B.A.P. 9<sup>th</sup> Cir. 2011), citing *Leavitt v. Soto (In re Leavitt)*, 171 F.3d 1219, 1224 (9<sup>th</sup> Cir. 1999).

## DISCUSSION

Debtor filed this bankruptcy case on April 9, 2009. In 2013, while this Chapter 13 case was pending, Debtor commenced an action asserting claims for sexual harassment. Debtor never disclosed the existence of this claim, or a worker's compensation claim during the pendency of this case. Debtor's confirmed Chapter 13 Plan required monthly plan payments of only \$538.50. Plan, Dckt. 21. Debtors provided for at least a 51% dividend to creditors holding general unsecured claims.

In reviewing the District Court file, this court notes that the reopening of this case and the disclosure of these claims occurred only after the Defendant in the District Court Action asserted that Debtor was prohibited by judicial estoppel from prosecuting the claims because Debtor failed to Schedule them in this bankruptcy case. E.D. Cal. 13-01368, Dckt. 37; December 29, 2014 Renewed Motion for Summary Judgment based on Judicial Estoppel. The Motion for Summary Judgment based on Judicial Estoppel was originally filed on August 13, 2014. *Id.*, Dckt. 19.

In the District Court Action Debtor filed a response to the August 13, 2014 Motion for Summary Judgment asserting that amended schedules had been filed in this bankruptcy case disclosing this asset. *Id.*, Dckt. 21; filed by Johnny L. Griffin III, attorney for Debtor. On August 28, 2014, Debtor filed the Amended Schedule B disclosing this asset. Dckt. 89. This Amended Schedule B was served on the Chapter 13 Trustee and the U.S. Trustee. Cert. of Service, Dckt. 90. That is after the plan had been completed and the Debtor's discharge entered.

The Complaint in the District Court Action was filed on July 9, 2013. The conduct upon which the claims are based occurred prior to and during this bankruptcy case. Such claims are property of the bankruptcy estate, to be prosecuted by the representative of this bankruptcy estate. In a Chapter 13 case that is the Chapter 13 Debtor.

The court having reopened this case, the chapter 13 debtors, Jose Hernandez Gonzalez and Robin Michelle Gonzalez, are the proper parties to assert the rights in the District Court Action.

However, since the assets were never disclosed, they have remained in the bankruptcy estate notwithstanding confirmation of the plan, completion of the plan, and Debtor obtaining a discharge.

"This Panel has previously stated, "[a]bandonment pursuant to Section 554 requires that the property to be abandoned is properly scheduled under Section 521(1)." *In re Pace*, 146 B.R. at 564. Here, if the Alleged Partnership exists, it was not scheduled. Accordingly, it has not been fully administered and was not abandoned back to Clarks."

*Clark v. Strand (In re Clark)*, 2008 Bankr. LEXIS 4738 at 11 (B.A.P. 9th Cir. Apr. 3, 2008) FN.1. The confirmed Chapter 13 Plan expressly provides that only scheduled property was revested in the Debtors upon confirmation of the Plan. 09-26667; Modified Chapter 13 Plan Paragraph 6.01.

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In the earlier decision in *Pace*, the Bankruptcy Appellate Panel stated:

"Abandonment pursuant to § 554(c) requires that the property to be abandoned is properly scheduled under § 521(1). *Vreugdenhill v. Navistar Int'l Transp. Corp.*, 950 F.2d 524, 526 (8th Cir.1991) (unless formally scheduled, property is not abandoned at the close of the estate, even if the trustee knew of the existence of the property when the case was closed); *In re Harris*, 32 B.R. 125, 127 (Bankr. S.D. Fla.1983) (property not scheduled was not deemed abandoned and remained property of the estate); *In re Medley*, 29 B.R. 84, 86-87 (Bankr. M.D. Tenn. 1983) (an unscheduled asset was not deemed abandoned and trustee could reopen case to administer the asset to creditors)."

*In re Pace*, 146 B.R. 562, 564 (B.A.P. 9th Cir. 1992).  
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Further, not having been disclosed and not having been abandoned back to the Debtors, this property of the bankruptcy estate has been protected from "harm" by the automatic stay provisions of 11 U.S.C. § 362(a).

"Undisclosed property of the estate does not revert to a debtor upon discharge in a Chapter 7. *Pace v. Battley (In re Pace)*, 146 B.R. 562, 564 (9th Cir.BAP1992). As such, under Section 362(c)(1) a stay against property of the estate remains in place until the property is no longer property of the estate.<sup>11</sup> Thus, stay relief was required to pursue the matter in state court."

*Clark v. Strand*, 2008 Bankr. LEXIS 4738 at \*9.

**JUNE 24, 2015 HEARING**



At the hearing, the court found that conversion of the case to one under Chapter 7, and requiring a new party in interest to be substituted into the District Court Action (a chapter 7 trustee) and disrupt that Action which is ready for trial was not in the best interest of the estate.

The court ordered the following:

**IT IS ORDERED** that the Motion to Dismiss is continued to 3:00 p.m. on January 12, 2016.

**IT IS FURTHER ORDERED** that Jose Hernandez Gonzalez and Robin Michelle Gonzalez, the Chapter 13 Debtors in this case, shall continue in the prosecution of the claims in the District Court Action pending before the United States District Court for the Eastern District of California, case no. 13-cv-01368, and the claims described as

Sexual Harassment Claim, Case Number:  
2:13-CV-01368-KJM-AC, and

Workers' Compensation Claim, Case Number: YCBT-550301

on Amended Schedule B filed in this bankruptcy case.

**IT IS FURTHER ORDERED** that all monies recovered for or relating to the above described claims shall be paid to the Clerk of the Court, for the United States Bankruptcy Court for the Eastern District of California pending further order of this court how such monies are to be disbursed.

**IT IS FURTHER ORDERED** that Johnny L. Griffin III, any other attorneys or professionals who seek to be compensated for legal services provided or reimbursed for expenses relating to such legal services provide to Jose Hernandez Gonzalez and Robin Michelle Gonzalez, as Debtors, in prosecuting the above describes claims which are property of the bankruptcy estate shall have the Debtors obtain authorization pursuant to 11 U.S.C. § 327 and obtain the allowance of any such professional fees and expenses pursuant to 11 U.S.C. §§ 330 and 332.

Dckt. 102.

#### **JANUARY 12, 2016 HEARING**

To date, no supplemental papers have been filed in connection with the instant Motion.

At the hearing, the Debtor reported that the sexual harassment claim has been dismissed by the District Court and the Workers' Compensation Claim has been resolved with only an award of lifetime medical therapy.

The court continued the Motion to 3:00 p.m. on February 23, 2016. Dckt. 107. Supplemental pleadings were ordered to be filed and served by Debtor by January 29, 2016, and Replies, if any, were to be filed and served by February

5, 2016.

#### **DEBTOR'S SUPPLEMENTAL DECLARATION**

On January 22, 2016, the Debtor filed a supplemental Declaration. Dckt. 108. The Debtor states that the case before the Workers' Compensation Appeals Board resulted in a stipulation that entitles the Debtor to future medical treatment as needed to cure or relieve the Debtor from the effect of the injury. Dckt. 109, Exhibit A.

Additionally, the Debtor states that she has not received any other compensation for injuries and does not anticipate any.

The Debtor then states that her sexual harassment claims were dismissed as a result of a Motion for Summary Judgment by the Defendants. Dckt. 109, Exhibit B.

The Debtor concludes by stating that she has informed the attorneys handling the harassment and workers compensation claims that they will need to file a Motion for Compensation in the bankruptcy case. The Debtor declares that she does not expect them to request any compensation.

#### **TRUSTEE'S RESPONSE**

The Trustee filed a response to the Debtor's supplemental declaration on January 28, 2016. Dckt. 111. The Trustee states that the Debtor does not have any additional assets to report in the case. The Order Approving Final Report and the Discharge of Debtor after Completion of Chapter 13 Plan have been filed. Dckt. 79 and 82.

The Trustee requests to dismiss the Trustee's Motion to Convert Case to Chapter 7 and that the case be closed.

#### **FEBRUARY 23, 2016 HEARING**

The court having reviewed the Trustee's request to dismiss the motion to convert, and it being consistent with the opposition of Debtor, the court dismisses the motion to convert without prejudice.

The court shall issue a further order setting a deadline for the filing of any further pleadings seeking relief, after which the Clerk of the Court will close the case if no matters are pending before the court.

The order shall further state that the court has not authorized the payment of any attorneys' fees or costs for the prosecution of any claims on the estate.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Convert filed by the Chapter 13 Trustee having been presented to the court, extensive supplemental

briefing having been provided, the underlying assets at issue being determined to be of nominal value for the estate, the Trustee requesting to dismiss this motion, the dismissal pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 7041 and 9014 being consistent with the opposition of the Debtor, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Convert the case is dismissed without prejudice.

**CHAMBERS PREPARED ORDER**

This bankruptcy case was reopened by Jose and Robin Gonzalez, the Chapter 13 Debtors, to disclose the existence of rights which were property of the bankruptcy estate which they were actively litigating. Motion, Dckt. 86. The court reopened the case and determined that they, as the Chapter 13 Debtors, should properly prosecute such claims rather than the case be converted to one under Chapter 7 and a trustee prosecute such claims. Order, Dckt. 102.

Ultimately, it has been reported to the court that the action pending in the United States District Court for the Eastern District of California, No. 13-cv-0168, has been dismissed and such claim is no longer being prosecuted. Supplemental Declaration of Robin Gonzalez, Dckt. 108.

The other claim for Workers' Compensation Benefits; Workers' Compensation Appeals Board, No. YCBT-550301; has been concluded with a stipulation providing for future medical treatment. Declaration of Robin Gonzales, Dckt. 108; and Stipulation Exhibit A, Dckt. 109.

The evidence provided to the court that prosecution of the two sets of rights for which the bankruptcy case was reopened has been concluded.

The Chapter 13 Debtors have not sought authorization to employ counsel or other professionals to prosecute these claims. 11 U.S.C. § 327, L.B.R. 2016-1. The court has not authorized the payment of any fees or expenses to any attorneys or other professionals employed to represent Robin Gonzalez or Jose Gonzalez in asserting, prosecuting, or attempting to enforce such rights and interests. 11 U.S.C. §§ 330, 331. The Debtors, and each of them, are not authorized to pay, and any such attorney or other professional are not authorized to receive, payment of any fees, costs, or expenses relating to the Chapter 13 Debtors, and each of them, in asserting or prosecuting such rights or interests.

If such counsel or other professionals desire to be paid fees or reimbursed expenses, they may request that the Debtors be authorized to employ them and an order allowing

specific amounts for fees and expenses.

Debtor Robin Gonzalez has represented to the court that the attorneys and professionals who represented her in connection with the District Court Action and Workers' Compensation Claim are not going to seek the payment of any fees or payment of expenses. Declaration, Dckt. 108.

Therefore, upon review of the evidence that the assets for which the case was reopened have been fully prosecuted, no recovery being obtained for distribution to creditors, and good cause appearing;

**IT IS ORDERED** that the Clerk of the Court may re-close this case after March 22, 2016, if there are not matters pending before the court.

**IT IS FURTHER ORDERED** that any attorney or other professional who represented Jose Gonzalez or Robin Gonzalez in connection with any rights, interest, or claims asserted in the United States District Court for the Eastern District of California case No. 13-cv-0168 or Workers' Compensation Appeals Board case No. YCBT-550301 may file a single motion combining relief which seeks both authorization for the Debtors to employ such counsel or other professional and for the allowance of reasonable fees and expenses. For purposes of such motion in this case, the court makes Federal Rule of Civil Procedure 18(a) applicable for such a motion (a contested matter) pursuant to Federal Rule of Bankruptcy Procedure 9014.

45. [15-29068](#)-E-13 MOHAMMAD NAZARIROD  
DPC-1

OBJECTION TO CONFIRMATION OF  
PLAN BY DAVID P. CUSICK  
1-20-16 [[30](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The case having previously been dismissed, the Objection is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Confirmation having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection is dismissed as moot, the case having been dismissed.

46. [15-23769](#)-E-13 CORY LEE COLEMAN  
PLC-3

MOTION TO CONFIRM PLAN  
1-6-16 [[61](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 48 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by creditors and the Chapter 13 Trustee withdrew his opposition as having been resolved. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 6, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
-----

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 8, 2016. By the court's calculation, 46 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Modified Plan is granted.</b>
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11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 8, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

48. [13-25371](#)-E-13 ROY/MICHELLE MARIANO  
WW-3

MOTION TO MODIFY PLAN  
1-6-16 [[46](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's



Chapter 13 Plan filed on January 6, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

49. [13-26976](#)-E-13 JESSE MONTANEZ  
WW-4

MOTION TO MODIFY PLAN  
1-12-16 [[68](#)]

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 42 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
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Jesse Montanez ("Debtor") filed the instant Motion to Confirm the Modified Plan on January 12, 2016. Dckt. 68.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 9, 2016. Dckt. 79. The Trustee opposes confirmation

because the Debtor has failed to provide a declaration from his girlfriend that she is contributing for the household expenses and that she plans to continue to contribute through the remainder of the plan.

## **DISCUSSION**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

The Trustee's objection is well-taken. The Debtor may not be able to make plan payments or comply with the plan under 11 U.S.C. § 1325(a)(6). The Debtor's plan relies on the continued contribution of the Debtor's girlfriend. According to the Debtor's Schedule I, the Debtor reports income from his girlfriend in the amount of \$1,250.00 per month. However, the Debtor's girlfriend has not provided a declaration stating under penalty of perjury that she is will continue to provide such supplemental income. Without an accurate picture of the Debtor's financial reality, the court cannot determine whether the plan is confirmable.

Though the Trustee's Opposition was filed on February 9, 2016, the Debtor has elected not to respond and file a supplemental declaration in Reply to the Opposition as of the court's February 21, 2016 review of the Docket for this case. Pursuant to Local Bankruptcy Rule 9013-1(f)(1), a Reply could have been filed any time prior to seven days before the February 23, 2016 hearing (February 16, 2016).

The Debtor has not provided evidence of the additional income upon which the Plan is dependant.

Therefore, the objection is sustained.

The modified Plan complies does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

50. [14-30278-E-13](#) GARY SHREVES AND KAREN MOTION TO MODIFY PLAN  
WW-7 BAYSINGER- SHREVES 1-6-16 [[127](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 6, 2016. By the court's calculation, 48 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 6, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed

order to the court.

51. [11-35484-E-13](#) WILLIAM/DIANE CATLETT  
PGM-4

CONTINUED MOTION TO MODIFY PLAN  
12-21-15 [[79](#)]

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on December 21, 2015. By the court's calculation, 36 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Modified Plan.</b>
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William and Diane Catlett ("Debtor") filed the instant Motion to Confirm on December 21, 2015. Dckt. 79.

#### **TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on January 8, 2016. Dckt. 92. The Trustee opposes confirmation because the plan is not the Debtor's best efforts. The plan proposes "\$117,913.72 through 11-15, \$415 x 7 starting 12-15" with a 2% dividend to unsecured creditors.

The Plan attempts to reclassify Class 1 claimant Shellpoint for

Debtor's residence to Class 4 to be paid outside the plan. The Trustee states that under the current confirmed plan, the Trustee was paying the ongoing mortgage monthly installment amount of \$1,862.43. The Debtors are attempting to modify the loan to reduce the payment to \$1,474.12, a difference of \$388.22.

The Trustee states the following as grounds for why the plan is not the Debtor's best efforts:

1. The Debtor is seeking to reduce the plan payment by \$1,610.00, an additional \$135.88 beyond what the Debtor had indicated they had available.
2. The Debtors' declaration (Dckt. 81) indicates that the plan continues to have an expense of \$259.00 a month for "Vehicle Tax/License" which should be explained by the Debtor as this represents \$3,108.00 per year for "Vehicle Tax/License" which the Trustee argues appears high.
3. The Debtor has not addressed as to any tax refund expected for 2015.
4. The Debtor also states adjusted changes to the Debtors' budget as follows:

<u>Expense</u>	<u>Original Expense</u>	<u>Adjusted</u>	<u>Reason</u>
Food	\$700.00	\$1,200.00	We have 3 ground children who eat more each year
Education	\$100.00	\$600.00	Daughter has gymnastic class. Other daughter is on a traveling soccer team that involves more monthly fees and travel expenses.
Home Main	\$50.00	\$200.00	Our home is almost 100 years old need continuous repairs. The sewer has needed to be cleaned out, toilet replaced, stucco redone, windows recauled [sic], washing machine
Clothing	\$50.00	\$150.00	We have three children that need seasonal clothing, now winter jackets and shoes. Clothes don't last more than a year with growth spurts
Personal	\$75.00	\$150.00	We have five persons that need haircuts, hair products, facial and body care
Entertainment	\$36.00	\$98.00	We have a family of five, including a teenager with expenses with friends
Water/Sewer	\$110.00	\$143.00	City bill has increased every year

According to the listed changes, the Debtor's expenses have increased by \$1,410.00, but no specific proof supporting the increase has been filed. The Trustee highlights the \$500.00 increase per month in monthly education costs.

5. The Debtor's amended Schedule I (Dckt. 82) lists a monthly income of \$5,777.90. Compared to the last filed Schedule I (Dckt. 1) that list a monthly income of \$4,508.57, it appears the Debtor's income has increased by \$1,269.33.

#### **DEBTOR'S REPLY**

The Debtor filed a reply on January 19, 2016. Dckt. 98. The Debtor requests a continuance of the hearing to allow the Debtor the opportunity to address the Trustee's concerns.

#### **JANUARY 26, 2016 HEARING**

At the hearing, the court continued the hearing to 3:00 p.m. on February 23, 2016. Dckt. 103. The Debtor was ordered to file and serve any supplemental papers on or before February 9, 2016. Any objections or responses were ordered to be filed and served on or before February 16, 2016.

#### **DEBTOR'S SUPPLEMENTAL DECLARATION**

The Debtor filed a supplemental declaration on February 9, 2016. Dckt. 109. The Debtor states that William Catlett is on a fixed income of \$4,400.00 a month through workman's compensation and Debtor Diane Catlett has a part time job of approximately 20 hours per week at \$10.00 per hour. The Debtor declares that the modification is necessary to deal with the mortgage on the restricted income.

The Debtor declare that they have three children which requires the Debtor to incur expense in food, clothing, sports participation, and personal hygiene. The Debtor states that one daughter takes gymnastics classes and the other does competitive traveling soccer, which requires fees, registration, hotel, and other expenses.

The Debtor states that they live frugally and do not take vacations. The Debtor asserts that their money is spent on the necessities of the children and of the home.

The Debtor asserts that they do not expect to receive a tax refund for 2015, since Debtor William Catlett only worked three months that year.

The Debtor believes that there was a typo for the vehicle tax/license amount. The Debtor declares that they have two vehicles which they pay \$118.00 for the van and \$120.00 for a truck. However, the document says that they pay \$3,108.00 per year at \$25.00 a month.

The Debtor also declares that they provide school supplies to the elementary school for two children. The Debtor states that they have field trips this year and their son has an outdoor week-long education camp with the school that the Debtor wish to send their son. They also restate that they have

expenses as to their daughter's soccer, in hope that she will be able to play in college and receive a scholarship.

## DISCUSSION

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation.

While the Debtor's supplemental declaration does provide explanation as to some of the concerns of the Trustee, the Debtor admitted that the supplemental budget has errors, namely the license fee.

The Debtor failed to address another issue, which goes to the heart of whether the case is being prosecuted in good faith. In the Motion to Confirm, Debtor states,

Due to a loan modification, Debtors cannot complete the plan as originally confirmed as stated under penalty of perjury in the accompanying Declaration of Debtors. In that Declaration Debtors state, "'We have secured a permanent loan modification with our lender and have been remitting that payment directly to the servicing agent, pursuant to the terms of the modification.'"

Dckt. 79. While the court authorized the modification on January 26, 2016, the Debtor states that they are intentionally violating the confirmed plan and diverting plan payments to the lender rather than making the payments to the Trustee.

This case was filed in 2011. The Debtors are in the fifty-fourth month of the Plan (when the motion was filed). On January 27, 2016, the court filed its order approving the loan modification, which reduced the Debtor's monthly mortgage payment by \$388 a month.

Under the prior confirmed plan, which included the mortgage payment, Debtor was paying \$2,025.00 a month for the final 13 months of the Plan. Of this, creditors with general unsecured claims were to receive a dividend of not less than 0.00%. First Modified Plan, Dckt. 58. This \$2,025.00 payment was allocated to pay the following:

Class 1 - Mortgage.....	\$1,862.34
US Trustee Fees (est 8%).....	\$ 162.00

The proposed Second Modified Plan now before the court chops the monthly plan payment to \$415.00 a month for the final seven months of the plan. Dckt. 83. Now, creditors holding general unsecured claims are to receive a 2.00% dividend (computed on general unsecured claims totaling \$84,786.62), for an aggregate distribution of \$1,695.72. With seven plan payments of \$415.00, there will be \$2,905.00 paid into the plan. Estimating Chapter 13 Trustee fees of 8%, that administrative expense will be \$232.40. After paying the \$232.40 and \$1,695.72 for the guaranteed minimum unsecured claim dividend, there is an "extra" \$1,928.12 for distribution to creditors holding general unsecured claims or payment of other administrative expenses.

One way to look at the situation is that the creditors are receiving

a dividend by virtue of the reduced mortgage payment - a 2% dividend. The Trustee's Opposition goes to whether the Debtor having obtained a \$388 a month reduction in the mortgage payment is improperly seeking to underfund the plan by concocting phantom expenses.

The declaration provided by Debtor in support of confirmation (Dckt. 81) plays into this contention. While having confirmed the original plan and the First Modified Plan with testimony under penalty of perjury that they could properly maintain their household on monthly expenses of plan based on the expenses of \$2,483.57 a month (Exhibit 2, schedule of expenses; Dckt. 57), now (for the last seven months of the Plan) Debtor's expenses have grown to \$3,888.57 (Exhibit 2, new schedule of expenses; Dckt. 82) - a 56% increase).

The best Debtor can muster for this dramatic increase in "necessary" expenses for the final seven months of the plan is: (1) our three growing children are eating more, so we will increase our food expense by 71%; (2) our daughter has a gymnastics class so we need to increase our educational expense 600%; (4) our home is now 100 years old, as opposed to 95 years old when we told you our home repair expense under penalty of perjury earlier, so we need to increase our home maintenance expense 300%; and (5) because we have the same number of people who need haircuts we need to increase our personal care expense 200%.

A more plausible response would have been that Debtor had stripped the budget to the bone to keep the house, and to this point they have done without some basic necessities to perform their plan. Debtor could have provided testimony of such. Debtor has failed (or refused) to provide any such testimony under penalty of perjury. Rather, they have taken the attitude that the court will ignore their prior statements under penalty of perjury and merely rubberstamp their request to reap the benefit of the loan modification reduction in payments, and then some additional monies into their own pockets.

Even for Debtor in the fifty-third month of a plan, such conduct is reflective of a party not dealing in good faith. This puts into doubt the veracity of prior testimony under penalty of perjury given by Debtor upon which the court relied.

Debtor has failed to provide credible testimony that Debtor's projected disposable income for the last seven months of the Plan is only \$415.00. The court does not know if Debtor got greedy and assumed by throwing out some dividend (the apparently "2% solution) the court and Trustee would blinding sign whatever new plan was thrown out. Possibly Debtor does have higher expenses and can shown how and why either they have changed since confirming the prior plans or how Debtor has done without for four years and five months. But Debtor has chosen not to provide any such explanation, but instead merely tell the court - "give me more money."

Debtor's counsel may plead, "judge, it's obvious that Debtor's family needs \$1,200 a month for the final seven months for food (a 71% increase) or that one of the Debtor's children wants to do gymnastics and soccer so the educational expense needs to be increased for the final seven months (a 600% increase). It is not obvious and up to the Debtor to provide credible evidence to carry Debtor's burden of proof.



Just these two line items alone over the remaining seven months of the plan each divert \$500 a month from the plan to Debtor. This aggregates \$7,000.00 over the final seven months of the plan. Instead of a 2% solution dividend, general unsecured claims would receive a 9.5% dividend (\$8,135 aggregate payment).

The court also notes the coincidence that the food expense and education expense each "need" to be increased by \$500.00. This coincidence is indicative of expenses which are created to achieve a pre-conceived end result of a minimum payment into a plan rather than a truthful, accurate statement of expenses. The Debtor has significantly understated the proposed disposable income in this case and fails to provide for payment of the projected disposable income to creditors. From the evidence presented, the projected disposable income for the final months of the plan would be at least \$1,415.00 a month - if the financial information of the Debtor can be believed.

This also raises serious issues concerning the good faith prosecution of this case, the good faith prosecution of the prior plans, and the good faith filing of this bankruptcy case. Having gotten to month fifty-three of the plan, it appears that Debtor may well have imperiled the bankruptcy case in its entirety and the ability to confirm any modified plan. This proposed plan has not be advanced in good faith by the Debtor.

The proposed modified Plan does not comply with 11 U.S.C. §§ 1322, 1325(a) and 1329 and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

52. [14-23685](#)-E-13 PAUL LUDOVINA  
LBG-8

MOTION FOR COMPENSATION BY THE  
LAW OFFICE OF STEPHEN J.  
JOHNSON FOR LUCAS GARCIA,  
DEBTOR'S ATTORNEY(S)  
1-19-16 [[132](#)]

**Final Ruling: No appearance at the February 23, 2016 hearing is required.**

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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on January 19, 2016. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<p><b>The Motion for Allowance of Interim Professional Fees is granted.</b></p>
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Lucas Garcia, the Attorney ("Applicant") for the Debtor, Paul Ludovina ("Client"), makes a Application for the Allowance of Fees and Expenses in this case. While not stating specifically if the Applicant is requesting fees as interim or final fees, the Applicant cites 11 U.S.C. § 330 which is the operative provision for final authorization of fees. However, that standard also applies to the allowance of interim fees pursuant to 11 U.S.C. § 331.

The Application does not clearly state that Applicant agrees to accept the total fees and costs as compensation for all of the legal work to be done over the 60+ months of the case. The fees requested are computed based on the actual work done during the period of May 8, 2013 through January 19, 2016. Applicant requests fees in the amount of \$16,800.50 and costs in the amount of \$444.03.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on January 21, 2016.

#### **STATUTORY BASIS FOR PROFESSIONAL FEES**

Pursuant to 11 U.S.C. § 330(a)(3),

In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including-

(A) the time spent on such services;

(B) the rates charged for such services;

(C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;

(D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;

(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and

(F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

(I) unnecessary duplication of services; or

(ii) services that were not--

(I) reasonably likely to benefit the debtor's estate;

(II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). The court may award interim fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

#### **Benefit to the Estate**

Even if the court finds that the services billed by an attorney are "actual," meaning that the fee application reflects time entries properly charged for services, the attorney must still demonstrate that the work performed was necessary and reasonable. *Unsecured Creditors' Committee v. Puget*

*Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). An attorney must exercise good billing judgment with regard to the services provided as the court's authorization to employ an attorney to work in a bankruptcy case does not give that attorney "free reign [sic] to run up a [professional fees and expenses] without considering the maximum probable [as opposed to possible] recovery." *Id.* at 958. According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

(a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?

(b) To what extent will the estate suffer if the services are not rendered?

(c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

*Id.* at 959.

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including pre- and post-filing case preparation, preparation and filing of motions for the valuation of secured property, and work on various Chapter 13 Plan-related motions. The court finds the services were beneficial to the Client and bankruptcy estate and reasonable.

#### **FEES AND COSTS & EXPENSES REQUESTED**

##### **Fees**

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

Pre-Filing Correspondence, Tasks, and Data Input: Applicant spent 21.2 hours in this category. Applicant assisted Client with general preparation before filing, corresponding frequently with Client in order to analyze and discuss the case, and inputting data.

General Correspondence, Tasks, and Data Input Beneficial to Confirmation and Maintenance of the Case: Applicant spent 12.1 hours in this category. Applicant assisted Client with general maintenance of the Chapter 13 case post-filing, corresponding frequently with Client in order to analyze and discuss the case, inputting data provided by Debtor, appearing telephonically on the Debtor's behalf in court proceedings, and advising Client as to the details of the case.

Motions to Confirm Chapter 13 Plan: Applicant spent 39 hours in this category. Applicant developed-and several times amended-a chapter 13 plan for the Debtor, Prepared and filed 4 motions to confirm, and frequently corresponded Client to advise him on matters related to the maintenance of the case.

Negotiations: Applicant spent 7.8 hours in this category. Applicant corresponded and negotiated with various creditors for the development of a confirmable chapter 13 plan.

Motions to Value Secured Property of the Debtor: Applicant spent 9.6 hours in this category. Applicant prepared and filed 3 motions for the valuation of secured property held by Client, and attended hearings for the same.

Other Significant Motions and Contested Matters: Applicant spent 13 hours in this category. Applicant responded to a motion for the dismissal of the chapter 13 case. Applicant also prepared and filed an objection to proof of claim, and the instant motion for fees.

The fees requested are computed by Applicant by multiplying the time expended providing the services multiplied by an hourly billing rate. The persons providing the services, the time for which compensation is requested, and the hourly rates are:

<b>Names of Professionals and Experience</b>	<b>Time</b>	<b>Hourly Rate</b>	<b>Total Fees Computed Based on Time and Hourly Rate</b>
Attorney Hours	47	\$225.00	\$10,575.00
Paralegal Hours	52.1	\$115.00	\$5,991.50
Legal Staff Hours	3.6	\$65.00	\$234.00
<b>Total Fees For Period of Application</b>			<b>\$16,800.50</b>

### **Costs and Expenses**

Applicant also seeks the allowance and recovery of costs and expenses in the amount of \$444.03 pursuant to this applicant.

The costs requested in this Application are,

<b>Description of Cost</b>	<b>Per Item Cost, If Applicable</b>	<b>Cost</b>
PF - Credit Check fee	\$40.00	\$40.00
PF - Filing Fee	\$281.00	\$281.00
MTV - Regular Mail	\$0.49	\$1.47
MTV - Certified Mail	\$3.79	\$30.32
MTC - Regular Mail	\$0.49	\$58.80
OTC - Regular Mail	\$0.49	\$0.98

OTC - Certified Mail	\$3.79	\$11.37
MFF - Regular Mail	\$0.49	\$15.19
GEN - Regular Mail	\$0.49	\$4.90
Total Costs Requested in Application		\$444.03

## **FEES AND COSTS & EXPENSES ALLOWED**

### **Fees**

#### **Hourly Fees**

The court finds that the hourly rates reasonable and that Applicant effectively used appropriate rates for the services provided. Interim Fees in the amount of \$16,800.50 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 331 are approved and authorized to be paid by the Chapter 13 Trustee under the confirmed plan from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

### **Costs and Expenses**

The First Interim Costs in the amount of \$444.03 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are approved and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

Applicant is allowed, and the Chapter 13 Debtor under the confirmed plan is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	\$16,800.50
Costs and Expenses	\$ 444.03

pursuant to this Application as interim fees pursuant to 11 U.S.C. § 331 in this case, for which final approval must be subsequently obtained from the court pursuant to 11 U.S.C. § 330.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Fees and Expenses filed by Lucas Garcia ("Applicant"), Attorney for Chapter 13 Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Lucas Garcia is allowed the following fees and expenses as a professional of the Estate:

Lucas Garcia, Professional Employed by Chapter 13 Debtor

Fees in the amount of \$ 16,800.50

Expenses in the amount of \$ 444.03,

The Fees and Costs pursuant to this Applicant are approved as interim fees and costs pursuant to 11 U.S.C. § 331, for which final approval must be obtained from the court by Applicant pursuant to 11 U.S.C. § 330.

**IT IS FURTHER ORDERED** that the Chapter 13 Trustee under the confirmed plan is authorized to pay the fees allowed by this Order from the available funds of the Plan Funds in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 5, 2016. By the court's calculation, 49 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Amended Plan is granted.**

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 5, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed



order to the court.

54. [15-28790](#)-E-13 BRIAN THRONBURG  
DPC-1

OBJECTION TO DEBTOR'S CLAIM OF  
EXEMPTIONS  
1-13-16 [[36](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on January 13, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Objection to Exemptions has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the Debtor and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the Debtor and the other parties in interest are entered, the matter will be resolved without oral argument and the court shall issue its ruling from the parties' pleadings.

**The objection to claimed exemptions is sustained and the exemptions claimed pursuant to California Code of Civil Procedure § 704.730 are disallowed in their entirety.**

The Trustee objects to the Debtor's use of California Code of Civil Procedure § 703.730 without showing that the Debtor qualifies for such exemption.

California Code of Civil Procedure § 704.730(a)(3) provides that the "homestead exemption" is provided to be \$175,000.00 if the judgment debtor or spouse who reside in the homestead, at the time of the attempted sale, are (1) 65 years of age or older, (2) physically or mentally disabled, or (3) at least 55 years of age and have a gross income of not more than \$25,000.00 if single or not more than \$35,000.00 if married.

The section in its entirety states,

§ 704.730. Amount of homestead exemption

(a) The amount of the homestead exemption is one of the following:

(1) Seventy-five thousand dollars (\$75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars (\$100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars (\$175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

Cal. Code Civ. Proc. § 704.730.

The Trustee asserts that the Debtor does not have a spouse or former spouse, has an annual income in 2014 of \$34,106.00 and annual income 2015 YTD at the time of filing of \$40,233.00. The Debtor's projected monthly income is \$3,791.00.

The Debtor filed a supplemental response on February 9, 2016 to the Trustee's Objection to Confirmation. Dckt. 44. The Debtor states that, after reviewing it with counsel, that the Debtor is not entitled to claim \$175,000.00 exemption pursuant to California Code of Civil Procedure § 704.730.

The Debtor states that he plans to propose an amended plan to pay 100% dividend to filed claims. The Debtor requests that the instant Objection be sustained but that the Trustee delay filing a motion to dismiss to allow the Debtor time to propose an amended plan.

The court agrees with the Trustee and Debtor that the Debtor does not qualify for the \$175,000.00 exemption pursuant to California Code of Civil Procedure § 704.730. The Debtor does not provide evidence that pursuant to the exemption statute, that the Debtor qualifies under any of the qualifications under § 704.730.

The Trustee's objection is sustained and the claimed exemptions are disallowed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to Exemptions filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection is sustained and the claimed exemptions pursuant to California Code of Civil Procedure § 704.730 are disallowed in their entirety.

55. [15-28790](#)-E-13 BRIAN THRONBURG  
DPC-2

CONTINUED OBJECTION TO  
CONFIRMATION OF PLAN BY DAVID  
P. CUSICK  
1-13-16 [[32](#)]

**Final Ruling:** No appearance at the February 9, 2016 hearing is required.  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney on January 13, 2016. By the court's calculation, 27 days' notice was provided. 14 days' notice is required.

The Objection to the Plan was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2) and the procedure authorized by Local Bankruptcy Rule 3015-1(c)(4). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

<b>The court's decision is to sustain the Objection.</b>
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David P. Cusick, the Chapter 13 Trustee, opposes confirmation of the Plan on the basis that:

1. The Plan fails the liquidation analysis. The Debtor's non-exempt equity totals \$71,321.00 and the Debtor proposes to pay the unsecured creditors a 3% dividend. The Debtor has claimed as exempt a value of \$175,000.00 under California Code of Civil Procedure § 704.730, which the Trustee argues the Debtor does not qualify for.

The Debtor filed a response to the instant Objection on January 26, 2016. Dckt. 39. The Debtor states, through Debtor's counsel, that Debtor's counsel has not been able to meet with the Debtor to discuss the Objection. The Debtor's counsel requests that the matter be continued to 3:00 p.m. on February 23, 2016 to be heard in conjunction with the Trustee's Objection to Exemptions.

#### **FEBRUARY 9, 2016 HEARING**

In light of the Trustee's instant Objection relies on the court finding that the Debtor is not entitled to exemptions pursuant to California Code of Civil Procedure § 703.140 and the fact Debtor has requested more time to meet with counsel, the instant Objection was continued to 3:00 p.m. on February 23, 2016. Dckt. 43.

#### **DEBTOR'S SUPPLEMENTAL RESPONSE**

The Debtor filed a supplemental response on February 9, 2016. Dckt. 44. The Debtor states that, after reviewing it with counsel, that the Debtor is not entitled to claim \$175,000.00 exemption pursuant to California Code of Civil Procedure § 704.730.

The Debtor states that he plans to propose an amended plan to pay 100% dividend to filed claims. The Debtor requests that the instant Objection be sustained but that the Trustee delay filing a motion to dismiss to allow the Debtor time to propose an amended plan.

#### **DISCUSSION**

The court concurs with the Trustee and the Debtor that the Debtor is not entitled to claim an exemption of \$175,000.00 pursuant to California Code of Civil Procedure § 704.730. As such, the Debtor's plan fails to pass the liquidation analysis.

Debtor acknowledges this and states an amended plan will be filed.

The Plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the Plan is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Objection to the Chapter 13 Plan filed by the Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Objection to confirmation the Plan is sustained and the proposed Chapter 13 Plan is not confirmed.

**Clerk Notice Hearing**

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(3) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's attorney, Chapter 13 Trustee, and creditors on December 17, 2015. By the court's calculation, 68 days' notice was provided.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion to Confirm the Amended Plan is granted.</b>
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11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the Motion has been filed by the Chapter 13 Trustee or creditors. The amended Plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on December 8, 2015 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

**Tentative Ruling:** The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 12, 2016. By the court's calculation, 42 days' notice was provided. 42 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g).

<b>The court's decision is to deny the Motion to Confirm the Amended Plan.</b>
--

Cassius Bell ("Debtor") filed the instant Motion to Confirm the Amended Plan on January 12, 2016. Dckt. 27.

**TRUSTEE'S OPPOSITION**

David Cusick, the Chapter 13 Trustee, filed an opposition to the instant Motion on February 2, 2016. Dckt. 34. The Trustee objects on the following grounds:

1. The Debtor's plan is not his best effort.
  - a. The Debtor proposes a 49 month plan. However, the Debtor understates his income as \$2,745.49 per month and has omitted the non-filing spouse income of \$2,709.20 per month. The Trustee argues that this makes the Debtor above median income and a 60 month plan is required.

- b. The Debtor did not provide a condition where any tax refunds received would be paid into the plan.
  - c. The Debtor's plan does not provide for the full increase of \$623.22 in plan payments after the TSP loan is paid off.
2. The Debtor's plan indicates a total unsecured debt amount of \$5,600.00. However, a review of the Debtor's Schedule F shows that the total unsecured debt is \$35,878.04. The Trustee believes this must be a typographical error but that it should be considered along with the Trustee's best effort objection.

#### DISCUSSION

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation.

The Trustee's objection is well-taken.

A review of the plan and accompanying Motion shows that the proposed plan is not the Debtor's best efforts. As noted by the Trustee, the debtor is proposing a 48 month plan when the Debtor appears to be an above median debtor. As such, the Debtor is required to propose a 60 month plan. 11 U.S.C. § 1325(b)(1)(B). The Debtor does not explain why the Debtor does not include the Debtor's non-filing spouse's income in calculating the applicable current monthly income.

Further highlighting the fact that the Debtor's plan is not his best efforts, the Debtor has historically received tax refunds from both the federal government and state. However, the plan does not provide for the payment of those refunds into the plan. This indicates that there is additional income that is not being provided for in the plan.

Lastly, the Debtor does not provide any explanation as to why, following the completion of loan payments on the TSP loan, why the Debtor's plan payments are not increasing by the full \$623.22 rather than only \$287.00. This once again indicates that there is additional income that the Debtor is not providing for in the plan.

As to the Trustee's last objection, the court concurs that it appears that the amount of unsecured debt listed in the plan is a scrivener's error. However, this error, placed in conjunction with the Trustee's other objections as to the best efforts of the proposed plan, the court finds that such errors further inflates the concern that the Plan is not the Debtor's best efforts.

The amended Plan does not comply with 11 U.S.C. §§ 1322, 1323 and 1325(a) and is not confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.



The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm the Plan is denied and the proposed Chapter 13 Plan is not confirmed.

58. [15-22596-E-13](#) JUSTIN VILLANUEVA  
PGM-1

MOTION TO MODIFY PLAN  
1-14-16 [[26](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on January 14, 2016. By the court's calculation, 40 days' notice was provided. 35 days' notice is required.

The Motion to Confirm the Plan has been set for hearing on the notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Confirm the Modified Plan is granted.**

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the Motion was filed by the Chapter 13 Trustee or creditors. The modified Plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Confirm the Chapter 13 Plan filed by the Debtor having been presented to the court, and upon review of

the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, Debtor's Chapter 13 Plan filed on January 14, 2016 is confirmed. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

59. [15-27296](#)-E-13 HOWARD THOMAS  
WSS-1

MOTION TO CONFIRM PLAN  
1-6-16 [[27](#)]

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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The Debtor having filed a subsequent proposed amended plan and Motion to Confirm on January 13, 2016 (Dckt. 38 and 40), the court construing the filing of an amended plan as a withdrawal of the plan filed on January 6, 2016, the court interpreting the "Withdrawal" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the hearing, and good cause appearing, **the court denies confirmation of the Debtor's plan filed on January 6, 2016.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

A plan having been filed by the Debtor, the Debtor having filed a proposed amended plan, the court construing such as an ex parte motion to deny confirmation of the December 4, 2015 pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and good cause appearing,

**IT IS ORDERED** that the Debtor's plan filed on January 6, 2016 is not confirmed.

**Final Ruling:** No appearance at the February 23, 2016 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditor, parties requesting special notice, and Office of the United States Trustee on January 11, 2016. By the court's calculation, 43 days' notice was provided. 28 days' notice is required.

The Motion for an Order of Contempt has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

<b>The Motion for an Order of Contempt is continued to 3:00 p.m. on March 22, 2016.</b>
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James and Marie Marshall ("Debtor") filed the instant Motion for Order of Contempt Against Wells Fargo Bank, National Association on January 11, 2016. Dckt. 89.

On February 16, 2016, the parties filed a Stipulation. Dckt. 95. The parties state that they have recently entered into settlement negotiations and request that the court continue the hearing to 3:00 p.m. on March 22, 2016.

On February 18, 2016, the court entered an order approving the stipulation to continue the hearing to 3:00 p.m. on March 22, 2016. Dckt. 97.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Order of Contempt against Wells Fargo Bank, National Association filed by Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is continued 3:00 p.m. on  
March 22, 2016.